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THE
SPEECHES
OF
THE HON. THOMAS ERSKINE
(NOW LORD ERSKINE),
WHEN AT THE BAR,
ON
SUBJECTS
CONNECTED WITH
THE LIBERTY OF THE PRESS,
AND AGAINST
Constructive Treasons.

COLLECTED BY
JAMES RIDGWAY.

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THE
P R E F A C E
TO THE
FOURTH VOLUME.

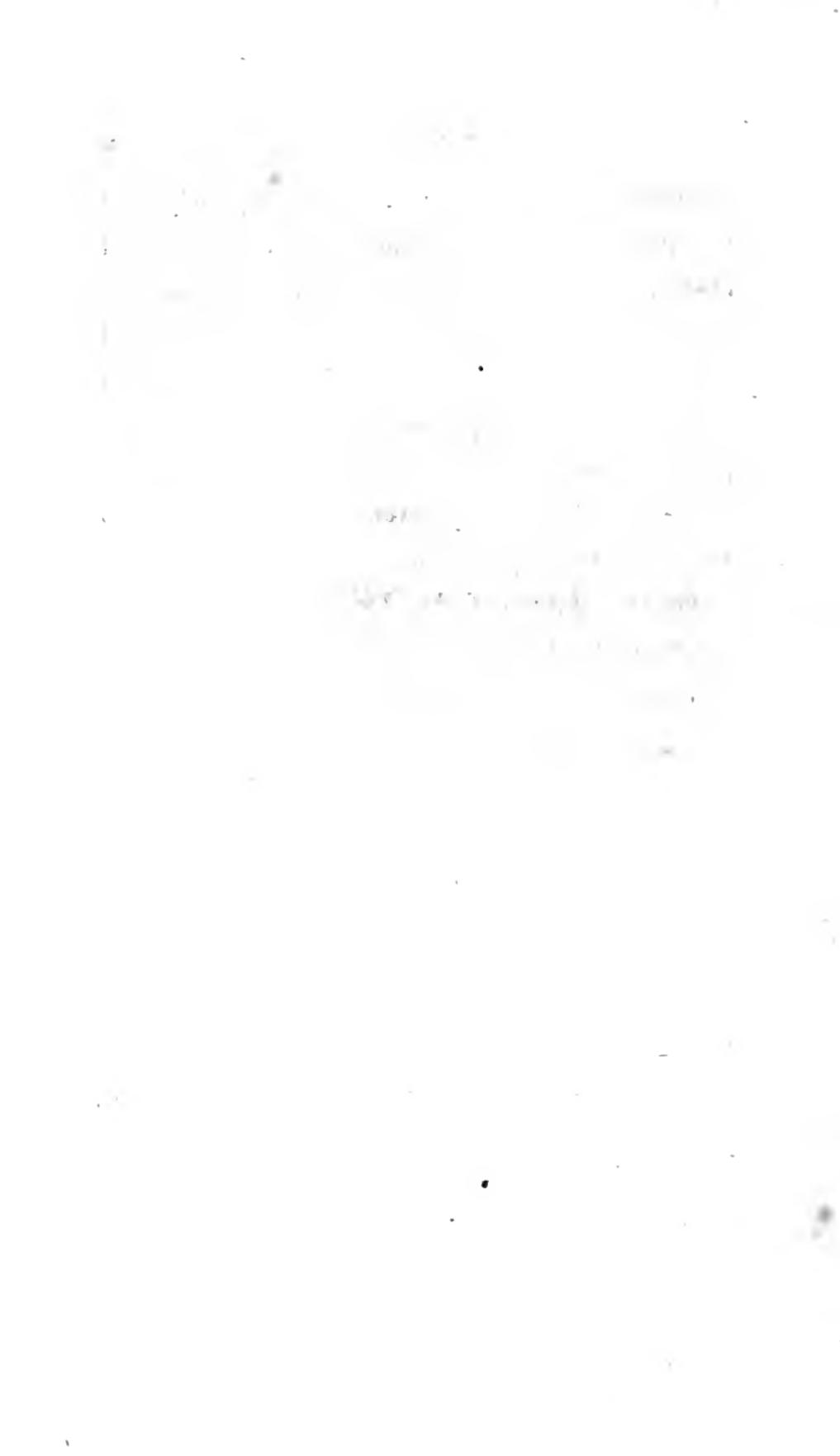
ALTHOUGH the Editor is possessed of several other genuine Speeches of Lord Erskine when at the Bar, some of which have been considered by the best judges as equal in interest to those already published, yet as they do not properly range themselves within the title of these Volumes, as being connected with the Liberty of the Press, and against Constructive Treason, he here closes this Collection, reserving the others for a separate, but an early publication. Indeed, the Proceedings against the Earl of Thanet do not come strictly within the scope of this Compilation, but they were, nevertheless, introduced into it, as containing most important observations upon the rules and principles of evidence, which, though equally applicable to every species of trial, are more emphatically important in criminal cases, where life and liberty are dependent upon them. How far they

had their just effect upon the occasion which produced them, the Editor forbears altogether from any observation; the evidence being before the readers, every person has the opportunity of forming an unbiassed opinion. This introduction, indeed, of other matter than the Speeches of Lord Erskine, which the Editor originally professed to publish, may, by some, have been objected to, as improperly swelling those Volumes; but he flatters himself, that, upon a candid consideration, it will be found to have been never done but when indispensably necessary, either for the proper understanding of the Speeches themselves, or in cases where the Speeches, standing alone, without the proofs or the arguments of the Counsel for the Crown in great State Prosecutions, might have exposed the Work to the imputation of having been set on foot for party purposes, which the Editor solemnly disavows.

The last article in this Volume, viz. Lord Erskine's Declaration of the Friends of the Liberty of the Press, though not a Speech at the Bar, the Editor could not feel himself justified in omitting; first, because if not now preserved by re-printing, it might have been altogether lost: secondly, because it was not merely the argument of Lord Erskine

as an advocate, in support of the great principles of the British Government, and indeed of universal liberty, which are the subjects of the whole of this Collection, but was delivered in his own personal character at a most singularly critical period in the history of our country, and in which he was supported by most of the eminent persons with whom he was at that time, and ever since has continued to be, connected in public life.

For the occasion of that Declaration, the Reader is referred to the particular Preface prefixed to the subject in the present Volume, page 114.



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Figure 1. The effect of the number of clusters on the classification accuracy of the proposed model.

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SPEECH for JOHN HORNE TOOKE, Esq. as
delivered by Mr. ERKSINE in the Sessions
House at the Old Bailey, on the 19th Day
of November 1794.

SUBJECT, &c.

THE following Speech for Mr. Tooke requires no other introduction or preface than an attentive reference to the Case of Thomas Hardy in the Third Volume; — the charges being the same, and the evidence not materially different. It is indeed not easy to conceive upon what grounds the Crown could have expected to convict Mr. Tooke after Mr. Hardy had been acquitted, since the Jury, upon the first trial (some of whom were also sworn as Jurors upon the second), must be supposed, by the verdict which had just been delivered, to have negatived the main fact alleged by both Indictments, viz.—That any convention had been held within the kingdom with intent to subvert, by rebellious force, the constitution of the kingdom. Nevertheless, the same propositions, both of law and fact, which, by reference to the former trial, appear to have been urged so unsuccess-

fully, were repeated, and again insisted upon, even after the following Speech had been delivered. For it appears from Mr. Gurney's report (by whose license the Editor has published many of the Speeches in this collection), that on Mr. Tooke's addressing the Court (after Mr. Erskine had spoken) as to the necessity of going into the whole of the evidence, the Attorney General answered as follows :

Mr. Attorney General. That address being made to me, I think it my duty to Mr. Tooke to inform him, that I speak at present under an impression, that, when the case on the part of the Prosecutor is understood, it has received as yet, in the opening of his Counsel, no answer ; and I, therefore, desire that Mr. Tooke will understand me as meaning to state to the Jury, that I have proved the case upon the Indictment.

Mr. Erskine. Then we will go into the whole case.—See Gurney's Trial of Tooke, vol. i. p. 453.

This took place on Thursday the 20th of November 1794, and the Trial accordingly continued till Saturday the 22d.

After the acquittal of Mr. Tooke, even a third trial was proceeded upon, viz. that against Mr. Thelwall, after which all the other Prisoners were discharged. We do not state these facts as presuming to censure the advisers of the Crown on these great State Trials ; on the contrary, we departed, as has been seen in the Third Volume, from the original plan of the publication, from an anxiety to give the most

faithful representation of the proceedings, without the publication of the entire Trials, as published by Mr. Gurney; which, at the time, were extensively circulated, and are, no doubt, still preserved in many libraries.

By comparing the introduction of the following Speech with that for Thomas Hardy, it will be seen what high ground the advocate felt he occupied in consequence of the former acquittal.

FOR THE PRISONER.

THE HON. THOMAS ERSKINE.

GENTLEMEN OF THE JURY,

WHEN I compare the situation in which, not many days ago, I stood up to address myself to a Jury in this place, with that which I now occupy—when I reflect upon the emotions which at that time almost weighed and pressed me down into the earth, with those which at this moment animate and support me, I scarcely know how to bear myself, or in what manner to conduct my cause.

I stood here, Gentlemen, upon the first trial, not alone indeed, but firmly and ably supported by my honourable, excellent, and learned friend, whose assistance I still have—

[Here Mr. Erskine was interrupted by the noise made by some workmen, which the Court ordered to be stopt; which being done, he proceeded.]

Gentlemen, I am too much used to public life to be at all disconcerted by any of these little accidents, and, indeed, I am rather glad that any interruption gives me the opportunity of repeating a sentiment so very dear to me—I stood up here, not alone, but ably and manfully supported by this excellent friend,

who now sits by me * ; yet, under circumstances of distress and agitation, which no assistance could remove, and which I even now tremble to look back upon.—I appeared in this place as the representative of a poor, lowly, and obscure mechanic, known only, of course, to persons in equal obscurity with himself; yet, in his name and person, had to bear up against a pressure which no advocate in England ever before had to contend with, for the most favoured or powerful subject. I had to contend, in the first place, against the vast and extensive—but, after the verdict which has been given, I will not say the *crushing* influence of the Crown. I had to struggle, from the very nature of the case, with that deep and solid interest which every good subject takes, and ought to take, in the life of the Chief Magistrate appointed to execute the laws, and whose safety is so inseparably connected with the general happiness, and the stability of the Government. I had further to contend with an interest more powerful and energetic—with that generous and benevolent interest, founded upon affection for the King's person, which has so long been, and, I trust, ever will remain the characteristic of Englishmen. These prepossessions, just in themselves, but connected with dangerous partialities, would, *at any time*, have been sufficiently formidable; but at what season had I to contend with them? I

* Mr. Gibbs, now Sir Vicary Gibbs, the Attorney General.

had to contend with them when a cloud of prejudices covered every person whose name could be mentioned or thought of in the course of my defence—prejudices not only propagated by honest, though mistaken zeal, but fomented in other quarters by wickedness beyond the power of language to express—and all directed against the Societies of which the Prisoners were members ; *only because they had presumed to do what those who prosecuted them had done before them in other times ; and from the doing of which they had raised their fortunes, and acquired the very power to prosecute and to oppress.*

I had to contend too with all this in a most fearful season ; when the light and humanity, even of an English public, was with no certainty to be reckoned on—when the face of the earth was drawn into convulsions—when bad men were trembling for what ought to follow, and good men for what ought not—and when all the principles of our free constitution, under the dominion of a delusive or wickedly infused terror, seemed to be trampled under foot. Gentlemen, when we reflect, however, upon the sound principles of the law of England, and the exalted history of its justice, I might, under other circumstances, have looked even those dangers in the face. There would have still remained that which is paramount to the ordinary law, and the corrector of its abuses :—there would still have remained that great tribunal, raised by the wisdom of our ancestors, for the support of the people's rights ;

—that tribunal which has made the law itself, and which has given me *you* to look at—that tribunal, which, from age to age, has been the champion of public liberty, and which has so long, and so often, been planted before it as a shield in the day of trouble.—But looking to that quarter,—instead of this friendly shield of the subject, I found a sharp and destroying sword in the hand of an enemy : **THE PROTECTING COMMONS WAS ITSELF THE ACCUSER OF MY CLIENT, AND ACTED AS A SOLICITOR TO PREPARE THE VERY BRIEFS FOR THE PROSECUTION.** I am not making complaints, but stating the facts as they existed. The very briefs, I say, without which my Learned Friends (as they themselves agree) could not have travelled through the cause, were prepared by the Commons of Great Britain !—came before the Jury stamped with all its influence and authority, preceded by proclamations, and the publications of authoritative Reports, in every part of the kingdom, that the influence of the prejudgment might be co-extensive with the island.

I had, therefore, to contend with an impeachment, without the justice belonging to such a proceeding.—When a subject is impeached by the Commons of Great Britain, he is not tried by a Jury of his country ; why ?—because the benevolent institutions of our wise forefathers forbade it. They considered, that, when the Commons were the accusers, the Jury were the accusers also.—They

considered the Commons in Parliament, and the Commons at large, to be one and the same thing, though one would think, from the proceedings we are now engaged in, and every thing connected with them, that they had no connexion with one another; but that, on the contrary, the House of Commons was holding out a siege against its constituents, and supporting its authority against the privileges of the people, whose representatives they are and ought to be. Upon an impeachment besides, the Lords in Parliament, upon the same principle, form a criminal court of justice for all the subjects of England. A common man is not *forced* before that high assembly, but *flies to it for refuge*; because, as Mr. Justice Blackstone well expresses it, all the rest of the nation is supposed, by the law, to be engaged in the prosecution of their representatives. But did the Lords in Parliament stand in that situation in the case of the Prisoners at this bar? Though not formally arraigned before the great men of the realm, could they look up to them for countenance and support? Gentlemen, the Lords united themselves with the Commons in the accusation, and, like the Commons, prejudged the cause by the publication of Reports, which contain the whole mass of the criminating evidence.

I had, besides all this, to wade through a mass of matter beyond the reach of the human understanding to disentangle or comprehend, and which no strength of body could communicate if understood;

a situation so new and unparalleled in the criminal justice of the country, that the Judges were obliged to make new experiments upon our legal constitution, to invent the means of trial: I go along with the decision of the Court as to the adjournment, though I waive no privilege for my Client; but what shall we say of a decision, which nothing but necessity could have justified, yet which starts up for the first time in the year 1794, after the constitution has endured for so many centuries; and which brings the Judges of the land in consultation together, to consider how by device, indulgence, or consent, or how at last, by the compulsion of authority, they might be able to deal with a case, which had not only no parallel, but nothing even analogous to it in the records or traditions of our country?

I had lastly to contend with all that array of ability and learning which is now before me, though with this consolation, that the contention was with honourable men. It is the glory of the English Bar, that the integrity and independence of its members is no mean security of the subject.

When, in spite of all this mighty, and seemingly insuperable pressure, I recollect that an humble and obscure individual was not merely acquitted, but delivered with triumph from the dangers which surrounded him;—when I call to mind that his deliverance was sealed by a verdict, not obtained by cabal, or legal artifice, but supported by principles which every man who has a heart in his bosom must ap-

prove, and which accordingly HAS obtained the most marked and public approbation ; when I consider all this—it raises up a whirlwind of emotions in my mind, which none but He who rides upon the whirlwind could give utterance to express. In that season of danger, when I thought a combination of circumstances existed which no innocence could overcome, and having no strength of my own to rely on, I could only desire to place the Jury under the protection of that benevolent Providence, which has so long peculiarly watched over the fortunes of this favoured island : sincerely, and from the bottom of my heart, I wished that a verdict should be given, such as a Jury might look up to God, as well as around them to man, when they pronounced it. Gentlemen, that verdict is given ; —it is recorded,—and the honour and justice of the men who, as the instruments of Providence, pronounced it, are recorded, I trust, for ever along with it.

It may be said that this way of considering the subject is the result of a warm enthusiastic temper, under the influence of a religious education, and it may be so—but there is another point of view in which men of all tempers, and however educated, must consider it. All men must agree in considering the decision as a great and solid advantage to the country, because they must see in it that our institutions are sound. All men must acknowledge that no event could be more fortunate than a public

trial, which has demonstrated that we hold our lives, and every thing most dear to us, under a law which nothing can supersede ; since there is little likelihood that men will desire to change a constitution which so thoroughly protects them.—And before this cause is over, you will see that no man has ever had any such disposition,

Gentlemen, we now come to the *merits* of the cause itself ; and though, if I were myself at the bar, instead of the honourable Gentleman who is arraigned before you, I should be disposed to trouble you very little in my own defence, yet I mean to pursue no such course as the advocate of OTHERS. I say the advocate of OTHERS : for my Client must forgive me if I almost lose sight of *him* in the determination of my duties. Indeed, I can hardly find him out in the mass of matter which has been read to you. One is obliged to search for him through the proceedings, and with difficulty can find his name ; whilst others, to whom I owe a similar attention, and who stand behind for trial, are undoubtedly implicated in part of that which has been fruitlessly read against HIM. It is this alone which obliges me at all to consider the quality of the transactions before you, and to apply them to the law, lest assumed facts and erroneous doctrines should meet me at *another* time, and in *another* character, touching in their consequences the safety of the other Prisoners, and of the whole people of this land.

The first thing we have to consider in this, as in all other trials, is, the nature of the accusation.— What are we here about?—For to say the truth, it is a little difficult at first view to find it out. It is the glory of the English law, that it requires, even in the commonest cases (*à fortiori in a case of blood*), the utmost precision of charge, and a proof correspondingly precise;—hitting the bird in the very eye; strictly conformable, not merely to the substance of the crime, but to the accusing *letter*.

Let us see, therefore, what the charge is—

When I had the honour to discuss this subject before, it was to another Jury, and, indeed, to another Court; for I now see on the Bench an honourable and learned Judge, who was not then present: some of *you* also, Gentlemen, most probably were in the way of hearing, and of receiving an impression from the able address of the Attorney General, in the introduction of Mr. Hardy's Trial: you were bound to be present in Court when the Jury was called, and it is not to be supposed, that, after having discharged, on that day, your duty to the public by a painful attendance, while the case was opened, you would continue it in order to hear the defence with which you had no manner of concern. If you come, therefore, with any bias upon your minds from the situation you were placed in by your duties, it *must* be a bias against ME; for you heard every thing on one side, and nothing upon the other: it becomes my duty, therefore, to go over

again the same arguments which I employed before, though some of you are not yet recovered from the fatigue of attending to them. Nor is the task less nauseous to myself; but irksome as it is, it must be performed:—I am not placed here to establish a reputation for speaking, or to amuse others with the novelty of discourse; but to defend innocence, and to maintain the liberties of my country.

Gentlemen, the charge is this—

The Indictment states, “ That all the Prisoners” (whose names I shall hereafter enumerate when I come to remark upon the evidence), “ intending to “ excite insurrection, rebellion, and war against “ the King, and to subvert the rule and govern- “ ment of the kingdom, and to depose the King “ from his royal state and government of the “ kingdom, and to bring and put the King to death “ —maliciously and traitorously, and with force, “ did, among themselves, and together with other “ false traitors, conspire, compass, and imagine, “ to excite insurrection, rebellion, and war, against “ the King, and to subvert the legislature, rule, “ and government of the kingdom, and to depose “ the King from the royal state and government “ of the kingdom, AND TO BRING AND PUT OUR “ SAID LORD THE KING TO DEATH.” This is the whole charge—But as it is an offence which has its seat in the heart, the treason being complete by the unconsummated intention, it is enacted by positive statute, and was indeed the ancient practice upon

the general principles of English law, that he who is accused of this crime, which consists in the invisible operations of the mind, should have it distinctly disclosed to him upon the same records, what acts the Crown intends to establish, upon the trial, as indicative of the treason; which acts do not constitute the crime, but are charged upon the record as the means employed by the Prisoner to accomplish the intention against the King's life, which is the treason under the first branch of the statute.

The record therefore goes on to charge, that, "in order to fulfil, perfect, and bring to effect their most evil and treasonable compassings and imaginations," (that is to say, the compassings and imaginations antecedently averred, *viz.* to bring and put the King to death,) "they met, consulted, conspired, and agreed among themselves, and others, to the Jurors unknown, to cause and procure a convention and meeting of divers subjects of the realm, to be held and assembled within this kingdom." Now, in order to elucidate the true essence of this anomalous crime, and to prevent the possibility of confounding the treason with the OVERT ACT, which is only charged as the manifestation of it,—let us pause here a little, and see what would have been the consequence if the charge had finished here, without further connecting the OVERT ACT with the TREASON, by directly charging the convention to have been assembled FOR THE PURPOSE OF BRINGING THE KING TO DEATH. I

shall not be put to argue that no proceedings could have been had upon such a defective indictment ; since common sense must inform the most unlettered mind, that merely to hold a convention of the people, which might be for **VARIOUS PURPOSES**, without alleging for **WHAT PURPOSE** it was assembled, would not only not amount to high treason, but to **NO CRIME WHATSOEVER**. The Indictment, therefore, of necessity, proceeds to aver, that “they conspired to hold this convention, **WITH** “*INTENT, and in order, that the persons so to be assembled at such convention and meeting, should and might, wickedly and traitorously, without and in defiance of the authority, and against the will of the Parliament of this kingdom, subvert and alter, and cause to be subverted and altered, the legislature, rule, and government of the kingdom.*” What then is the charge in this first count of the Indictment, when its members are connected together, and taken as one whole ? It is, that the Prisoner conspired, and confederated, with others, to subvert the rule and government of the kingdom, and to depose the King, and **TO BRING AND PUT HIM TO DEATH** ; which last of the three is the only essential charge : for I shall not be put to argue that the Indictment would have been equally complete without the two former, and wholly and radically defective without the latter ; since it has been, and will again be conceded to me, **THAT THE COMPASSING THE KING'S DEATH IS THE GIST OF THE IN-**

DICTMENT, WHICH NOTHING CAN ADD TO, AND THE OMISSION OF WHICH NOTHING CAN SUPPLY. The Indictment, therefore, having charged the traitorous compassing, proceeds, in conformity to the statute, to state the act charged to have been committed in fulfilment of it ; which, you observe, is not an armed assembly to seize and destroy at once the person of the King, but a conspiracy to effect the same purpose through the medium of a convention ; the Indictment, therefore, charges their design to assemble this convention, not as a meeting to petition for the reform of Parliament, or to deliberate upon the grievances of the country, but with the fixed and rooted *intent in the mind*, that this convention, when got together, whatever might be its external pretext, should depose the King, AND PUT HIM TO DEATH. It is impossible therefore to separate the members of this charge without destroying its whole existence ; because the charge of the compassing would be utterly void without the overt act which the statute requires to be charged as the means employed by the Prisoner to accomplish it, because no other acts can be resorted to for its establishment ; and because the overt act would be equally nugatory if separated from the compassing ; SINCE THE OVERT ACT DOES NOT SUBSTANTIVELY CONSTITUTE THE TREASON WHEN SEPARATED FROM THE TRAITOROUS PURPOSE OF THE MIND WHICH PRODUCED IT, BUT IS ONLY THE VISIBLE MANIFESTATION OF THE TRAITOROUS

INTENTION, WHICH IS ADMITTED, ON ALL HANDS, TO BE THE CRIME.—*Your office, therefore, Gentlemen—(I defy the wit, or wisdom, or artifice of man, to remove me from the position)—your office is to try whether the record, inseparable as I have shown it to be in its members, BE TRUE, OR FALSE ; —or, to sum up its contents in a word, whether the Prisoner conspired, with others, to hold a convention or meeting, with the design that, under the mask of reform of Parliament, it should depose the King from his royal office, and DESTROY HIS LIFE.*

There are several other overt acts charged in the Indictment, to which, however, you will see, at a glance, that the same principle will uniformly apply ; since the compassing the death of the King is alike the charge in all of them ; the overt acts only differing from one another, as the Indictment charges different acts connected with the assembling of this convention—such as *how* it was to be held—*who* were to form committees for projecting its meeting—*and so on*—which I do not particularize just now, because I shall have occasion to consider them distinctly when I come to the particulars of the evidence. There is one of the counts, however, that has been so strongly relied on in argument, and to which so large a portion of the evidence has been thought to apply, that it is necessary, in this place, to attend to its structure. I mean the count which charges the circulation of papers. We have heard a great many of them read, and they will be a

lesson to me never again to destroy old newspapers as useless wrappings, but to treasure them up as precious *manuscripts* for the discovery of plots, and secrets of conspirators: for, with a very few exceptions, the whole of the written evidence—by which so deep laid and detestable a conspiracy is supposed to have been developed by the seizure of the persons and correspondences of traitors—has been to be found, for two years past, upon the public file of every common newspaper, and retailed, over and over again, in every town and country magazine in the kingdom; and that too with the implied consent of His Majesty's Attorney General, who could not help seeing them, yet who never thought of prosecuting any man for their publication. Yet these said old newspapers have been on a sudden collected together, and their circulation charged as an overt act of high treason against the honourable Gentleman before you; although, with a very few and perfectly harmless exceptions, it has not been shown that he either *wrote* them, or *published* them, or *read* them, or even *knew* of their existence.

But supposing him to have been the author of all the volumes which have been read, let us examine how they are charged, in order to erect their circulation into treason.

The Indictment states, that “further to fulfil their traitorous intention *as aforesaid*” (referring to the antecedent charge of compassing in the former count), “they maliciously and traitorously did

“ compose and write, and cause to be composed
“ and written, divers books, pamphlets, letters, and
“ instructions, purporting, and containing therein,
“ amongst other things, encouragements and ex-
“ hortations to move, induce, and persuade the
“ subjects of our said Lord the King, to choose,
“ depute, and send, and cause to be chosen, de-
“ puted, and sent, persons as delegates, to com-
“ pose and constitute such convention as *aforesaid*,
“ with the traitorous purposes *aforesaid*”—*which is*
agreed to be a reference to the traitorous purposes
enumerated in the antecedent part of the Indictment.
Here, therefore, let us pause again, to review the substance of this accusation.

The charge, you observe, is NOT the writing of a libel, or libels; or for their publication, or circulation; but their composition and circulation *to effect the premeditated, preconcerted treason against the King's life.* This *intention*, in their circulation, was accordingly considered by the Court most distinctly and correctly, not only in the charge to the Grand Jury, but upon the former trial, as the merest matter of fact which could possibly be put upon parchment; totally disentangled from every legal qualification. We are not, therefore, examining whether these papers which have been read, or any of them, are *libels*; but whether (whatever may be their criminal or illegal qualities) they were written and circulated by men, who, having predetermined, in their wicked imaginations, to *depose and put to*

death the King, wrote and published them to excite others to aid them in the accomplishment of that detestable and traitorous conspiracy.

There is another overt act, in which the publication of the same papers is charged, which I only read to you to show the uniform application of the principle which obviously pervades every branch and member of the Indictment. It states, that "the Prisoners, in further fulfilment of the treason *aforesaid*" (i. e. *by reference, the treason of PUTTING THE KING TO DEATH*), "and in order "the more readily and effectually to assemble such "convention and meeting as aforesaid, *for the traitorous purposes aforesaid*" (i. e. *by reference, the traitorous purpose against the life of the King*), "they composed, and caused to be composed, "divers books, pamphlets, &c. purporting and "containing, amongst other things, incitements, "encouragements, and exhortations, to move, "induce, and persuade the subjects of our said "Lord the King to choose, depute, and send, and "cause to be chosen, deputed, and sent, persons "as delegates to compose such convention and "meeting as aforesaid, to aid and assist in carrying "into effect such traitorous, subversive alteration "and deposition as last aforesaid." So that *this* charge differs in nothing from the *former*.—For it is not that criminal pamphlets were published, but that they who published them, having wickedly and maliciously conceived in their minds, and set on foot a conspiracy wholly to overthrow and subvert

the government, to depose, and *to put to death the King*, published them for the express purpose of exciting others to join them in the accomplishment of their treason. It does not charge the publication of libellous matter, which, peradventure, or even in all probability, might excite others to originate such a conspiracy ; but directly charges the criminal purpose of exciting others to assist in the accomplishment of one already hatched in the mind and intention of the Prisoner.

Gentlemen, I should not further enlarge upon matter which appears to be so self-evident, more especially as I perceive that I have the assent of the Court to the meaning and construction of the Indictment as I have stated it, were it not that on the former trial it was directly questioned by the Solicitor General, in an argument which I cannot possibly reconcile with any one principle or precedent of English law. I am persuaded that he will not consider this observation as a personal attack upon his integrity, or any depreciation of his professional learning, for both of which I have always had a great respect. The truth is, when the mind has long been engaged upon a particular subject, and has happened to look at it in a particular point of view, it is its natural infirmity to draw into the vortex of its own ideas, whatever it can lay hold of, however unsuited to their support. I cannot account upon any other principle for the doctrine maintained by so very learned a person, in his late

reply in this place; a doctrine so extraordinary, that I would not venture to quote it from my own memory, and which I shall, therefore, read to you from the note I have been furnished with by my Learned Friend who sits near me* : a doctrine which I am persuaded the Solicitor General would not, upon reflection, re-maintain to be the law; and which if it were the law, I would not live in the country longer than to finish my address to you. He says roundly, that the law upon this subject is perfectly clear; namely, that any act done (attend, I beseech you, to the expression), “*that any act done which MAY endanger the life of the King, is, in the judgment of the law, an act done in pursuance of an intent to compass his death.—*” “*That the act is, in point of law, demonstrative of the purpose, and constitutes the crime of high treason; that the imagination of personal harm to the King forms no part of it; and that it is not material whether the person charged had in contemplation the consequences that might follow from what he did, it being sufficient, independently of all intention, if the death of the King was a PROBABLE CONSEQUENCE of what he was about to do.*”

Gentlemen, one hardly knows where one is after reading so strange and confounding a proposition. The argument, in short, is neither more nor less than this—That if I do an act, though with the

* Mr. Gurney.

most innocent mind, and without contemplating that any danger can possibly touch the King; nay more, if from a mistaken zeal I do an act from which the Jury are convinced that I honestly conceived his person would be safer, and his reign more secure and illustrious; yet, *if not in the event*, but only in the *opinion of lawyers*, my conduct led to the direct contrary consequence, I am to be adjudged in law a compasser of the King's death.—I am to be found, in point of law, *to have intended what I never thought of*; and a Jury, whose province is to declare the **FACT**, is to be bound in conscience to find me guilty of designing the King's death, though their consciences inform them, from the whole evidence, that I sought nothing but the health of his person, and the honour of his Crown. Gentlemen, this is such a monstrous, horrible proposition, that I would rather, at the end of all these causes, when I had finished my duty to their unfortunate objects, die upon my knees, thanking God that, for the protection of innocence, and the safety of my country, I had been made the instrument of denying and reprobating it, than live to the age of Methusalem for letting it pass unexposed and unrebuted.

It may be curious to examine to what conclusions this doctrine of a lawyer's speculation upon probable consequences, shutting out the examination of actual intention, might lead. It is part of the evidence before you against the honourable Gentleman at

your bar, that a proposition was made to, and adopted by, the Constitutional Society to send a delegate to the Convention at Edinburgh; and you have been desired, from this measure, and others of a similar bearing, to find an intention to destroy the King, from the probable consequence of such proceedings. Let us try the validity of this logic—The Society of the Friends of the People (some of whose proceedings are in evidence) had a similar proposition made to them to send a delegate to this same Convention, and the measure was only rejected, after a considerable degree of debate. Suppose, then, on the contrary, they had agreed to send one, and that I, who am now speaking to you, had been of the number who consented, I should then have been in a worse predicament than my Client, who appears to have opposed it; I should have been found to have consented to an act, which, *according to some legal casuists*, had a tendency to destroy the King; and although my life was laboriously devoted to the duties of my profession, which cut me off from attending to the particular conduct of reformers, though approving of their general and avowed object, Mr. Yorke's speech at Sheffield, and all the matter besides which has consumed our time and patience for three days past, would have been read to establish my conspiracy with people whom I never saw or heard of in the course of my existence. It is, besides, equally high treason to compass and imagine the death of the Heir Ap-

parent, as the death of the King; and if the nature of the conspiracy was to reach the King's life, by subverting the government, its subversion would lead as directly, in its consequence, to the destruction of his successor, and consequently would, upon the acknowledged principles of law, be a compassing of the death of the Prince of Wales. See, then, to what monstrous conclusions it would lead, if an act could be considered as legally conclusive of an intention, instead of examining it with the eye of reason, and as a fact from the circumstances attending it. It so happened that at this very time, and though a member of this society of reformers, I was Attorney General to the Prince; sworn of his Privy Council; high in his personal confidence; and full of that affection for him which I yet retain. —Would it have been said, Gentlemen (I am not seeking credit with you for my integrity), but would it have been said without ridicule, that a man, placed as I was in a high situation about the Heir Apparent of the Crown, who had at once the will and the privilege to reward my services; that I, who was serving him at the very moment in terms of confidence and regard, was to be taken conclusively, *as a judgment of abstract law*, to be plotting his political destruction, and his natural death?

This doctrine, so absurd and irrational, does not appear to me to be supported by any thing like legal authority.

In the first place, let it be recollected that this is

an Indictment on a statute, and not upon the common law, which has the precedents made by Judges for its foundation ;—the rule of action here depends upon a **WRITTEN UNALTERABLE** record, enacted by the Legislature of the kingdom for the protection of the subject's life, and which the Judges upon the Bench have no right to transgress or alter a letter of, because other Judges may have done so before them. As far as the law stands upon tradition, it is made by the precedents of Judges, and there is no other evidence of its existence ; but a **STATUTE** is ever present to speak for itself, in all courts, and in all ages ; and I say with certainty—speaking in my own name and person, and desiring to stand or fall as a professional man, by what I utter, that the law is as I maintained it upon the trial of Thomas Hardy, and as I maintain it now. I admit that a statute, like the common law, must receive a judicial interpretation ; and that, wherever the letter of an act of Parliament is ambiguous, the constructions which have been first put upon it, if rational, ought to continue to be the rule.—But where a statute is expressed in such plain, unambiguous terms, that but one grammatical or rational construction can be put upon it ; when the first departure from that only construction does not appear to have taken its rise from any supposed ambiguity of its expression in the minds of those who first departed from it, which is the general history of constructive departures from written laws, but

comes down tainted with the most degraded profligacy of Judges notoriously devoted to arbitrary and corrupt governments; when the very writers and Judges whose writings and decisions first supported such original misconstructions, honestly admit them to be misconstructions, and lament and reprobate their introduction; when the same lamentation and reprobation of them is handed down from commentator to commentator, and from court to court, through the whole series of constructive judgments; and lastly, when Parliament itself in different ages, as the evil became intolerable, has swept them all away; when, to avoid the introduction of new difficulties, it has cautiously left the old letter of the statute standing to speak for itself, without any other commentary than the destruction of every one that ever had been made upon it, and the reversal of every judgment which ever had departed from its letter, concluding with the positive prohibition, in all future time, of the one and of the other:—in such a case, I do maintain, and, as an English lawyer, feel myself bound for the public safety to declare, in opposition to whatever authorities may be found to the contrary, that if the statute of Edward the Third can be departed from by construction, or can be judged otherwise THAN IF IT HAD PASSED YES-TERDAY, there is, properly speaking, no such thing as written law in England.

Gentlemen, you will find me justified in what I say by the language of the statute itself, which is

clear and unambiguous, and by the declarations of its genuine meaning by subsequent Parliaments.

The words of the statute of the 25th of Edward the Third, are these:

“ Whereas divers opinions have been before this time, in what case treason shall be said, and what not—the King, at the request of the Lords and Commons, has made a declaration as hereinafter followeth :

“ When a man doth compass or imagine the death of our Lord the King—or of our Lady his Queen ; or of their eldest son and heir ; or if a man do levy war against THE KING in his realm, or be adherent to the King's enemies in his realm, giving them aid and comfort, and thereof be proveably attainted of open deed by people of their condition.”

The reason of passing it, as expressed by the act itself, and by Lord Hale and Lord Coke in their Commentaries, demonstrates the illegality of any departure from its *letter* ; because it was passed to give *certainty* to a crime which, by *judicial constructions*, had before become *uncertain*. Lord Hale says “ that at common law there was a great latitude used in raising offences to the crime and punishment of treason, by way of interpretation, and arbitrary construction, which brought in great uncertainty and confusion. Thus, accroaching of royal power was a usual charge of treason accidentally, though a very uncertain charge ; so that

“ no man could tell what it was, or what defence to
“ make to it.” He then proceeds to state various
instances of cruelty and vexation, *and concludes with*
this observation :

“ By these, and the like instances that might be
“ given, it appears how arbitrary and uncertain the
“ law of treason was BEFORE THE STATUTE of the
“ 25th of Edward the Third, whereby it came to
“ pass, that almost every offence that was, or
“ seemed to be, a breach of faith or allegiance, was
“ by *construction*, and *consequence*, and *interpreta-*
“ *tion*, raised into the offence of high treason.”

To put an end to these evils, therefore, and to give to the harassed subjects of England security and peace, this sacred law was made ; but for a season with very little effect, because wicked Judges still broke in upon its protecting letter by arbitrary constructions, insomuch that Lord Hale observes, that although the statute of Edward the Third had expressly directed that nothing should be declared to be treason, but cases within its enacting letter—
“ yet that things were so carried by parties and fac-
“ tions in the succeeding reign of Richard the Second,
“ that it was little observed ; but as this or that party
“ got the better, so the crime of high treason was in
“ a manner arbitrarily imposed and adjudged, which
“ by various vicissitudes and revolutions mischieved
“ all parties, first or last, and left a great inquietude
“ and unsettledness in the minds of the people, and
“ was one of the occasions of the unhappiness of

“ that King.” All these mischiefs, he further observes, arose from breaking the great boundary of treason by a departure from the LETTER of the statute, which was so great a snare to the subject, that after many temporary acts of Parliament passed and repealed, and many vexatious and illegal judgments, clashing with, and contradicting one another, the statute of Queen Mary was at last enacted, which swept them all away, and as Lord Coke observes, in his Commentary upon it, in the Second Institute, not only set up again the very letter of the statute of the 25th of Edward the Third, but repealed all judicial interpretations past, and prohibited all recurrence to them in future.

I will give it you in his own words: “ In this statute of Mary two things are to be observed. First, “ that the word expressed in the statute of Mary excludes all implications or inferences whatsoever. Secondly, that no former attainder, judgment, precedent, resolution, or opinion of Judges or Justices, of high treason, other than such as are specified and expressed in the statute of Edward the Third, are to be followed or drawn into example. FOR THE WORDS BE PLAIN AND DIRECT—“ ‘ That from henceforth no act, deed, or offence, shall be taken, had, deemed, or adjudged to be high treason, but only such as are declared and expressed in the said act of the 25th of Edward the Third, any act of Parliament or statute after the 25th of Edward the Third, or any other de-

"claration or matter, to the contrary notwithstanding—" ing."

I do therefore maintain, that the statute of King Edward the Third, plain in itself, and rendered still more so by the parliamentary exposition of the act of Queen Mary, is a **PEREMPTORY RULE**, and that no appeal can be had upon the subject to any writers or decisions, whatever may be the reputation of the one, or the authority of the other.

I find nothing, however, in any writer of character, or in any decision, which deserves the name of authority, to which such an appeal could successfully be made. Lord Hale nowhere says, that a conspiracy to subvert the *Government*, or any rebellion, pointed merely at the King's *royal authority*, is high treason within this branch of the statute. He uniformly considers the crime as a design against the King's **NATURAL LIFE**; and treats nothing even as an overt act of it, that is not so pointed against the King's **PERSON**, as to be legal evidence of a conspiracy against his **EXISTENCE**. "If men," says Hale, "conspire the **DEATH** of the King, and "thereupon provide weapons, or send letters in the "execution of it, this is an overt act within this "statute." Undoubtedly it is—but mark the principle, and attend to Lord Hale's language, which is plainly this:—If men conspire the **DEATH** of the King, and do these things in execution of the conspiracy, the things so done are *legal evidences* of the treason: but the treason, which is the intention

of the mind against the King's life, must first exist, before any step could be taken in pursuance of it.

Another passage in Lord Hale, upon which the whole argument against us appears in a manner to be built, is, in my mind, equally clear, and perfectly consistent with the letter of the statute :

“ If men conspire to imprison the King **BY FORCE**
“ **AND A STRONG HAND**, until he has yielded to
“ certain demands, and for that purpose gather
“ company, or write letters, that is an overt act to
“ prove the compassing the King's death ; for it is
“ in effect to depose him of his kingly government,
“ and was so adjudged by all the Judges in Lord
“ Cobham's case.”

Here, you observe, that the conspiracy, even to imprison the King, is not stated as a substantive act of treason, independently of a design against his **LIFE**, but only as an overt act to prove the compassing of his **DEATH** ; and so far was Hale from considering that constructive attempts upon the King's *government* or *authority*, without direct force pointed against his *person*, could even be offered as evidence to support an Indictment for compassing his death, that he seems anxious to prevent the reader from running to such a conclusion ; for he immediately afterwards says, “ But then this must be intended “ of a conspiracy *forcibly* to detain and imprison the “ King.”

Gentlemen, I have only troubled you with these observations, to prevent any thing which has been

offered as evidence upon this trial, from being at all confounded in your minds, as connected with the charge.—We have indeed attempted nothing against the King's *government*; but leaving that still to be the question, there is not a tittle in the whole body of the proof, which has any the remotest relation to any conspiracy to *seize* the King, or to *depose him*, which alone could support a charge of compassing the King's death; for the Indictment itself does not point even to any conspiracy to depose the King directly by force against his person, but only constructively, through the medium of a subversion of the government.

Gentlemen, the charge, therefore, which the Crown seeks to bring home to us, not only as it is to be collected from the Indictment, but as it is explicitly pointed by the argument, is this—that a design was formed to call a convention of the nation, and that the Prisoner at the bar was engaged in it; that he consulted with others for the appointment of committees of co-operation and conference, consisting of the persons now in prison, who were delegated by the two great London Societies at the head of the conspiracy; and that the convention, which was to be assembled as the result of this confederacy, was to destroy, by force, the legal government of the country, and to form itself into a legislature for the nation: thereby superseding, not only the functions of the three branches of Parliament, but the executive authority of the Crown:—

that this, and this alone, was the secret object of all these Societies, though covered with popular pretexts of restoring the constitution, until their machinations should be sufficiently ripe to throw off the veil, to avow their principles, and to establish them by force: that this, therefore, amounted to a conspiracy to depose the King, which was an overt act of high treason for compassing his death.

Gentlemen, I am sure I have done justice to the Crown in my statement of its proposition; and I will be equally just in my answer to it.—For I admit, that if the Attorney General satisfies you *upon the fact*, that this proposition is true, he gives you evidence from whence it ought to be left for your very serious judgment, whether those who were engaged in a conspiracy to usurp the King's authority, might not be reasonably supposed to have also contemplated his destruction, which was so likely to follow from the annihilation of his office. I desire it may be remembered, that I have never denied, either now or upon the former trial, that the destruction of the King's natural life was not a probable consequence of a forcible coercion of his person, for the extinction of his authority; nor that an act done with deliberation, leading to a mainly probable consequence, is not good *EVIDENCE of the intention to produce that consequence*. My whole argument has only been, and still is, **THAT THE INTENTION AGAINST THE KING'S LIFE IS THE CRIME, THAT ITS EXISTENCE IS MATTER OF FACT,**

AND NOT MATTER OF LAW, AND THAT IT MUST THEREFORE BE COLLECTED BY YOU THE JURY, INSTEAD OF BEING MADE THE ABSTRACT RESULT OF, A LEGAL PROPOSITION, FROM ANY FACT WHICH DOES NOT DIRECTLY EMBRACE AND COMPREHEND THE INTENTION WHICH CONSTITUTES THE TREASON.

But, that this is the law of England, and the law immediately applicable to the present question, fortunately does not depend upon any argument of mine, nor upon any appeals I have made to the authoritative writings of the sages of the profession. I have a much better security for my purpose—the security that what his Lordship, who is to assist you in your deliberations, has said upon one occasion, he will say upon another; I have the express and direct authority of Lord Chief Justice Eyre, in that part of his charge to the Grand Jury, where he laid before them the very matter we are now engaged in for their consideration. “If,” says his Lordship, “there be ground to consider the professed purpose “of any of these associations, a reform in Parliament, as mere colour, and as a pretext held out “in order to cover deeper designs—designs against “the whole constitution and government of the “country; the case of those embarked in such “designs is that which I have already considered. “Whether this be so or not, is MERE MATTER OF “FACT; as to which I shall only remind you, that “an inquiry into a charge of this nature, which .

"undertakes to make out that the ostensible purpose is a mere veil, under which is concealed a traitorous conspiracy, requires cool and deliberate examination, and the most attentive consideration; and that the result should be *perfectly clear and satisfactory*. In the affairs of common life, no man is justified in imputing to another a meaning contrary to what he himself expresses, but upon the fullest evidence." This the learned Judge lays down with the greatest propriety as a general rule of evidence, applicable to all cases, and therefore most emphatically applicable to high treason, where the Prisoner is not to be criminated by conjectures, and inferences, or strains of wit, but proveably attainted according to the language of the statute. It must be remembered, too, that this sound and salutary doctrine was not delivered by the Court as an *abstract proposition*, but the application of it was *directly pointed to the occasion*, and given to the Grand Jury, as a standard to direct their judgments *in the very matter before us*. The cause, therefore, is brought beyond the power of evasion or controversy, to one short point, disentangled from all ambiguity or legal distinction: since, upon the express authority of the Court which sits to try the Prisoner, independently of all other authorities, it is a mere naked question of *fact* which you are to examine:—there is nothing which can affect him *legally*, or which, it is even contended, can affect him, unless *you* are prepared

to say, upon your oaths, in the presence of God and your country, that you have materials in evidence before you, from whence you feel yourselves bound in conscience to pronounce, that the parties who engaged in the proposition of holding a convention, did NOT engage in it according to their professions to collect the public opinion upon the subject of national abuses, and for the consideration of constitutional redress, but for the direct, though concealed purpose, of resisting, BY FORCE, the authority of Parliament. I repeat the expression, of resisting, BY FORCE, the authority of Parliament, and assuming to themselves the control and dominion of the nation. THIS IS THE FACT TO BE MADE OUT, AND THE BURDEN OF THE PROOF IS UPON THE CROWN.—I do not stand here to disprove, but to examine what has been proved; and I confess myself, therefore, to be utterly at a loss how to pursue my discourse—for you have heard nothing upon which you would pull a feather out of a sparrow's wing. There is not only no evidence upon which reasonable men might deliberate between a verdict of Guilty or Not guilty, but, literally, no EVIDENCE AT ALL;—nothing that I could address myself to, but through the medium of ridicule, which, much as it would apply to the occasion in other respects, it would be indecent to indulge in upon a great State Trial, so deeply concerning the dignity of the country, and so seriously affecting

the unfortunate persons whom I shall be called upon to defend hereafter.

Let not, however, this condition of a prosecution, commenced under such exalted auspices, depend upon my single assertion, but let it be brought to the test of examination.

The Attorney General contends, that he has made out PROVEABLY, *i.e.* without the possibility of a reasonable doubt, that this convention was projected for the detestable purpose charged by the Indictment; and that their avowed objects were nothing but a surface of colour and deceit. He says, that two societies were set on foot in this town for these traitorous objects: that one of them (the Constitutional Society) was instituted by Mr. Tooke, and that he organized and superintended the others:—that he prepared their resolutions;—that he superintended their correspondence with similar societies, which were established at Sheffield, Manchester, Birmingham, Edinburgh, Perth, and most of the populous towns in both parts of Great Britain; and that the whole body of their communications with one another manifested their design against the very being of the Government. This is the proposition—but has he proved it, or any part of it? I answer—he has not.—In the first place, did Mr. Tooke set on foot the Constitutional Society?—I answer again, he did not.—It was instituted by a most worthy and honourable person, who will be called before you as a witness, if you shall

not think your time mispent in hearing evidence where nothing has been proved: it was instituted by Major Cartwright, a man as much attached to the constitution of his country, and as enlightened to understand it, as any one who hears me, whatever may be his station. This assertion is not made from the instructions of a brief; I speak from my own knowledge of the man: Major Cartwright, who began that institution, continued to be a member of it during the progress of its proceedings arraigned before you; he is a member of it now; and he will tell you, that he shall continue to be one, notwithstanding this prosecution, until its objects are accomplished.

The Constitutional Society was instituted by this Gentleman, for the object which it has uniformly professed and adhered to—an object which it pursued in common with some of the greatest and wisest men which this country has for ages produced; it was instituted to produce, if possible, by the progressive influence of public opinion, a Reform IN THE COMMONS HOUSE OF PARLIAMENT; a measure certainly not originated by Major Cartwright, but forced by the corruptions of Parliament itself, and the consequent calamities of our country, upon the attention of every enlightened statesman during the present reign. The father of the present Minister uniformly and publicly imputed the calamities of Great Britain to this fatal source. The succession of destructive wars, without a national

object ;—the rash and improvident expenditure of public money ;—the ravages upon the constitution by the influence of the Crown—were all of them ascribed by this great statesman to the loss of that control in the people, over the proceedings of Parliament, which they were entitled to by the ancient principles of the constitution. The great Earl of Chatham was one of the first persons who called the attention of the public to the absolute necessity of a reform in Parliament, to redeem the nation from ruin ; it was the great feature of his life, and the foundation of his fame.

As the avowed objects of the Society were thus originated and countenanced by persons of the highest station, let us see whether it was instituted for the perversion of these principles by obscure and necessitous men :—Gentlemen, the contrary is most notorious ; and it may be established by referring to the names of the original members ; the Duke of Richmond was one of the earliest : and he pushed the principle and the practice of reformation very much farther than Mr. Tooke has ever been disposed to follow him ; a fact which I promise to establish by the uniform tenour of his life. Mr. Tooke considered the disposition of the popular franchise of election as matter of expediency in government, and to be moulded by Parliament in its discretion for the attainment of constitutional freedom ; the Duke, on the other hand, considered universal suffrage to be an inherent privilege of the people—

to be CLAIMED by men AS OF RIGHT, and not yielded to them as an indulgence. It is not to be wondered at, therefore, that His Grace's doctrines should acquire the ascendancy ; since, independently of his illustrious patronage, they were more flattering, and better calculated for a rapid progress. I agree with the Duke of Richmond, that there exists in the people of England, as in every people, an inherent right to be governed according to the universal assent of the community ; but I think that the people would judge weakly for themselves by desiring their representatives to carry forward to the Crown, for its ratification, the system of UNIVERSAL suffrage. Yet, while I say this, as Mr. Tooke's sentiments, and as my own, I confess, at the same time, that the arguments by which the Duke of Richmond supported his system, and which has been uniformly followed by all the other Prisoners, were not calculated to impose upon the ignorant, but are well worthy of attention and consideration from the wise. The Duke's argument was of this sort (I do not profess to adopt the very phrase)—“ When it is conceded,” says His Grace, “ that *some* reform of Parliament is indispensably “ necessary for the safety of the country, *who* is to “ insure a reform that will give general satisfaction, “ and produce obedience and stability ? If you go to “ a given extent, founded upon principles of expe- “ diency, others, upon the same principles, will seek “ to push it to an extent still further, and others to

“ an extent beyond that ; so that reformation, however pure the design of its author, instead of giving firmness and vigour to Government, would only be the parent of discontent.” This was the difficulty which occurred to the Duke; and out of it he saw no road, as he himself expresses it, but a reform upon principle, which grants nothing from expediency or favour, “ BUT WHICH GIVES TO EVERY MAN HIS OWN.” These were His Grace’s doctrines, as I shall read them presently from the work which he acknowledged in the course of his former evidence, and which appears, throughout the whole cause, to have been THE VERY SCRIPTURE OF ALL THESE SOCIETIES. These, I doubt not, are His Grace’s opinions still ; for though a man may change his sentiments in matters which depend upon policy and expediency—though he may think it prudent to grant at one time that, which further reflection may suggest to be unwise to be granted, yet no honest man can change his mind as to the propriety of giving to every man what he believes and acknowledges to be his own. But the Duke of Richmond’s opinions are not the question : it is sufficient for me, that when these opinions were published, and for a long time insisted on by this intelligent and illustrious person, no man living thought of imputing, or can now reasonably impute, to him a design to overturn the constitution, or to enervate its functions. Yet you are now called upon to devote to infamy and death the Gentleman whom I

am defending, not indeed for treading in the Duke of Richmond's steps—not indeed for adopting the plan of universal suffrage, or for following it up by the same means which the Duke has recommended, but for shrinking to a plan far more restrained and moderate, and declining even to effect that system of moderation, by the procedure which the Duke both inculcated AND PRACTISED.

But it seems all these doctrines and proceedings are but *colour and deceit*, manifested by the discipline and regularity of their siege against the character and authority of Government. The conspirators sat, it seems, by *delegated authority*, from multitudes too large for consultation ;—they did so, certainly ; still pursuing the example, in form as well as in substance, of the highest men in the kingdom, among whom, by the bye, are to be found many of the members of that Government which has levied this prosecution. I will prove to you (for I have now in Court some of the first and most honourable men in the kingdom to prove it), that in the year 1780, the very same plan of delegation from large bodies was adopted, and for the identical object of correcting, by the formidable engine of public discountenance and censure, the improvident expenditure of public money, wrung from the people by corrupt influence in the House of Commons. I will prove, that for the express and avowed purpose of reforming the Government of the kingdom, these honourable persons, who were never accused

or suspected of treason, sat in convention in the Guildhall of the city of London ; delegates for different districts were appointed, some of whom are now in my eye ; and you will find, in short, that no one step, in form or in substance, has been taken by the unfortunate persons who are now the subjects of this prosecution, that were not taken, and, in my opinion, legally and constitutionally taken, by their superiors, whose examples they have followed. Let my expressions be properly understood ; I stand upon a great theatre, and should be sorry to say any thing which I can have occasion to recall. Let it be recollected, that I am not defending *all the papers* which have been read ;—some of them are rash and absurd in the extreme ; many of them are indecent ; many of them clash with one another, which is not surprising, since they were written by persons of various descriptions, who had no communication with one another. But that is not the question—the question is, *what were the objects of these Societies, from the result of the whole evidence?* These papers are *not* prosecuted as libels, but are charged to have been written *with the intention* to promote a convention to supersede and assume the government. But will any honest man say, that he can collect from these writings, *taken in a mass*, and as indicative of the pursuits of their authors, any such intention or system ? on the contrary, it is impossible to listen to them with common candour and attention, without observing, that the needle is not.

truer to the pole, though, when it is disturbed and agitated, it oscillates round the point of its attraction, than these poor people were to the promotion of reform IN THE COMMONS HOUSE OF PARLIAMENT, by collecting the sense of the people on the subject; conscious that though Parliament, as the Duke of Richmond expresses it, would not *spontaneously* yield, what those who sway it have a corrupt interest in refusing, yet that it might be obtained by that which must, and will in the end, obtain every thing from any government, however constituted—the slow, gradual, and progressive effect of public opinion ;—This was their object—and I do maintain here, in my own person, that it is the privilege of Englishmen so to collect the opinion of the country; and that it is the duty of Parliament, nay, its very use and office in the State, to attend to, and to give effect to the opinions so collected.—An eminent person, whose writings I have often had occasion to cite, expresses this sentiment with admirable justness and force—“ The virtue, spirit, and essence of the “ House of Commons, consists in its being the ex-“ press image of the feelings of the nation. It was “ not instituted to be a control UPON the people, “ as of late has been taught, by a doctrine of the “ most pernicious tendency, but was designed as a “ control FOR the people. It was supposed origi-“ nally to be *no part of the standing government of* “ *this country* ; but was considered as a control upon “ it, issuing *immediately* from the great body of

“ the people, and speedily to be resolved into the
“ mass from whence it arose.”

To bring back the House of Commons to this genuine office and character, by fixing the public attention to its departure from it, was the obvious drift of all the proceedings of the Societies, as they are fairly to be collected from the evidence. Undoubtedly there are among the papers strong invectives against unbridled monarchies, because they were written while monarchs, having no law but their unbridled ambitions, were laying waste the liberties of the world ;—there are, I admit, strong censures upon those corruptions which have embarked this country in a system (as they thought it) of tyranny and injustice ; but there is nothing in them which touches the King of Great Britain's majesty or office, or the hereditary dignity of the Peers ; there is nothing which glances at a wish to introduce a republic into England : there is strong democracy, indeed, but it is confined to its proper sphere—to the restoration of the House of Commons, WHICH IS THE CONSTITUTIONAL DEMOCRACY OF ENGLAND.

The House of Commons is perpetually talked of as if it were a self-existing body, independent of the people ; whereas it is their mere agent ; the organ by which they speak and act ; and which betrays and abdicates its trust the moment that it assumes a language of its own, which the people do not auspicate and approve. Take away such a

House of Commons from the British Government,—remove the control which the people have in it upon the executive authority by the free choice of their representatives, and then tell me how it differs from the most despotic establishments, which are the just detestation of the world. Yet how can it be asserted that the people of England have that control, if they have not the free choice which bestows it? The Society of the Friends of the People, part of whose proceedings the Crown has thought fit to make evidence, and to speak of with respect, have placed upon the Journals of the House of Commons, and demonstrated by positive evidence, this fallen, humiliated condition of the country. They offered to prove, that Peers and the Treasury actually nominate ninety members, and procure, by influence, the return of seventy-seven more, making together one hundred and sixty-seven: that ninety-one individual commoners in the country procure the election of one hundred and thirty-nine, and that one hundred and sixty-two individuals absolutely return three hundred and six members, a majority of the entire House of Commons.

Gentlemen, this is no vague assertion of mine—I am reading the precise state of it, as it was offered by a regular motion in Parliament, which I had myself the honour to second; we offered to establish, that one hundred and sixty-two persons did actually return three hundred and six out of five hundred and fifty-eight, which is a majority of the House.

So that every thing that is to bind and ascertain your rights or mine ;—every measure that is to promote the glory, or to bring on the destruction of the country ;—every act or system of government, which is either to give us the continued prosperity of peace, or to afflict us with wasting and calamitous wars ;—every event that may render this mighty nation flourishing and happy to the latest posterity, or bend it down to the ignominious yoke of foreign or domestic enemies ; all these heartstrings of a people, instead of depending upon a House of Commons, proceeding from themselves, are to be pulled and torn asunder, as the caprice or interest of one hundred and sixty-two individuals, who choose representatives for the whole kingdom, may suffer or direct. Yet we are told that it is the pride and glory of the English Government that by law we are equal, living under the same sanction, and enjoying similar privileges.

Gentlemen, all this was made manifest to the House of Commons by the Honourable Gentleman who made the motion I allude to, and who held a language which the meanest man in England can understand. His language was this—“ I assert “ this to be the condition of England ; if you say it “ is *not*—do justice to yourselves by calling upon us “ for the proof, and expose your calumniators to “ reproach—but if it *be* the condition of England, “ shall it not be redressed ?” Gentlemen, the proof was not received, and the grievance continues. This is the clue to the whole evidence.

I do not mean, therefore, to say (and let it be understood that I have not said), that my Clients would not be equally guilty, and equally subject to capital punishment, if, under the irritation of this or any other grievance, they had said—Let us supersede this surreptitious Parliament, and hold a Convention to assume its functions.—When I asserted that the people in this, and in every country, had a right to change their government, I never meant—what must have been supposed by the Court, from the indulgent interruption I received—I never meant that each individual, choosing for himself, might rise in arms to overturn, by force, an established constitution—Far from it, Gentlemen—I meant to say—what the people of England will be the last to misunderstand, as they were the first to practise—that all governments stand upon the public will, and ought to endure only for the public benefit; and that when this sacred maxim is forgotten, or trampled upon, a nation, without the conspiracy of individuals, which criminal law can act upon, will, sooner or later, *do itself justice*. I meant further to say, that when I observe men referring to these great and original principles of society—when I see them recurring, in argument, to the deeds of freedom which their ancestors have achieved—when I see Englishmen particularly referring to the glorious era of the Revolution, when their fathers drove from the inheritance of the

Crown a race of kings which had reigned over them almost time beyond memory, and sent for a private man (*to them at least*) to govern in their stead—when I contemplate this disposition, I am so far from considering it to be an attack on the King's authority, that, in my mind, it is a fresh confirmation of, and exultation in his title;—His Majesty is the King of the people, upon the principle alone that the people can change their Kings; and it is the most glorious title which any Prince can enjoy.

THESE ARE MY SENTIMENTS.—I love the King, but I can have no other respect or affection for him than that which grows from the common relation of Prince and subject—But speaking of *him* who by the course of nature is to succeed him, and feeling much more than a common interest in *his* prosperity and glory, I hold the same language, and have ever, publicly and privately, held it. If he is not to inherit and to fill the Throne upon that best and most honourable title, his inheritance is not worth having, and is not long to be had.—They who act upon any other principle, betray the King, and endanger his establishment.—Say to the people of England, This is your constitution—It is not fastened upon you as a weight to crush you—but has descended to you from your wise forefathers, for your protection and happiness—It is *their* institution, the work of their wisdom, and their heroic valour—As they made it for themselves and their posterity, so *you* may

change it for you and for yours.—BUT WILL YOU WANTONLY DESTROY YOUR INHERITANCE? Say this to them, and, to use the expression of a celebrated speaker, in the case of America, “ They will cling “ and grapple to their constitution, and no force “ under heaven will tear them from their allegiance “ to it.” Let those, then, who govern the country, beware how they propagate the fashionable doctrines of corrupt power.—Let them recollect that the English people are generous and enlightened, and know the value of their own institutions.—Treat them with liberality, confidence, and justice, and nothing is to be feared.—But if, on the other hand, a system of constraint and terror is to be pursued, and one part of the nation frightened or corrupted to defame the other, I tremble to think of,—I dare not give utterance, in this place, to the consequences.

This was foreseen by the Duke of Richmond, and was the avowed and wise reason for his earnestness in the cause of reform ; and he so expresses it in his publication, which the whole proof has demonstrated to have been the cause and the model of all the proceedings before you :—why then are *their* motives assumed or argued, against the whole evidence, to be different? I will read the passage :

“ The lesser reform has been attempted with “ every possible advantage in its favour ; not only “ from the zealous support of the advocates for a “ more effectual one, but from the assistance of “ men of great weight, both in and out of power.

“ But with all these temperaments and helps it has failed. Not one proselyte has been gained from corruption ; nor has the least ray of hope been held out from any quarter, that the House of Commons was inclined to adopt any other mode of reform. The weight of corruption has crushed this more gentle, as it would have defeated any more efficacious plan, in the same circumstances. From that quarter, therefore, I have nothing to hope.” *From what quarter was there nothing to hope?* From the House of Commons, which had been tried, in which not one proselyte had been gained from corruption. What then was his resource? I shall give it to you in his own words : “ It is from the people at large that I expect any good. And I am convinced that the only way to make them feel that they are really concerned in the business, is to contend for their *full, clear, and indisputable rights of universal representation.*” Rights that are repugnant and contradictory cannot exist. If there be a right in the people to universal suffrage, it is the Government which conspires against the people, and not the people against Government. But my Client offers no such argument —*he differs totally from the Duke of Richmond* ; and therefore, when His Grace comes here to give evidence, he ought not, upon the only principle which can justify these proceedings, to be permitted to retire; since he has written and done ten times more than can be imputed to the unhappy, miserable men

who are now languishing in prison, for following much less than his example. His Grace, in the same paper, expresses himself further, in these remarkable words :—“ When the people are fairly and “ equally represented in Parliament, when they have “ annual opportunities of changing their deputies, “ and, through them, of controlling every abuse of “ Government in a safe, easy, and legal way, there “ can be no longer any reason for recurring to those “ ever dangerous, THOUGH SOMETIMES NECESSARY, “ EXPEDIENTS OF AN ARMED FORCE, WHICH NO- “ THING BUT A BAD GOVERNMENT CAN JUSTIFY. “ Such a magnanimous end to your proceedings, “ when, after having restored liberty, commerce, “ and free government to your country, you shall “ voluntarily retire to the noble character of private “ citizens, peaceably enjoying the blessings you have “ procured, will crown your labours with everlasting “ glory, and is worthy the genuine patriotic spirit “ which animates the Irish Volunteers.” Let it not be forgotten, that this letter was addressed to Colonel Sharman, commanding a large armed force in Ireland, without commission from the Crown.

Gentlemen, it is amazing the different effect which *the same writings* have, according as *the author* happens to be cited when the work is read. If this letter, which, coming from the pen of the Duke of Richmond, is only a spirited remonstrance against corrupt ministers, had been read in evidence by Mr. Shelton at the table, as the letter of Citizen Margarot, Skir-

ving, or Yorke, the whole mass would instantly have been transmuted into high treason against the King.

But it seems that their objects were different—for that it is plain they had abandoned the constitutional mode of petition, which was alone recommended in this letter. I maintain that this imputation is directly in the teeth of the whole body of the evidence. All the witnesses, both now, and upon the former trial, and the witnesses too for the Crown, prove the very reverse:—they all say that they looked to success through the slow operation of reason;—that they knew the House of Commons would disregard, as it had often disregarded, the scattered petitions of *small numbers*; but that if they could collect the *universal sense of the people* upon the subject, the success of their object would be insured, and insured through the regular organs of Government. How else were the questions on the Slave Trade carried?—Parliament had treated the measure, in its origin, with contempt; and I must say, that the arguments against its sudden or speedy abolition were so weighty, in my mind, that I could not give my assent to it; because I knew, from an acquaintance with the islands, that part of the evidence was erroneous and exaggerated, and because I thought the white population totally inadequate and insufficient to maintain the settlements established under the faith of the nation; but when at last the great voice of the people of England came to be collected together—when Parliament was

surrounded, not with arms, but by petitions—I recollect that I was a representative of the people, and that my opinion ought to be controlled by the judgment of the nation. Many others, I believe, conducted themselves upon the same principle. The constituents of any given member have no right to control his judgment, **BUT THE VOICE OF THE PEOPLE OF ENGLAND, UPON ANY SUBJECT, OUGHT TO BE A RULE TO THE HOUSE OF COMMONS.** These very petitions, upon the subject of the Slave Trade, were collected too in the very manner which now gives such mighty offence: they were managed by delegation and committees of conference and co-operation in every part of the kingdom.

Let us next examine what part of the offence, upon the principles it is contended to exist, applies peculiarly to the unfortunate Prisoners who have been selected for criminal justice; and if their guilt can be established, let us see how many are to be involved in it; for Mr. Attorney General is a person of too much wisdom and experience to impute to the seven people in Newgate the design to call a Parliament without a wide-spread combination. How then is the line to be drawn? And to what circumference is the empire of destruction to extend? If the evidence of the conspiracy is to be collected from the whole mass and tenour of the conduct of these Societies, and is to attach upon the Prisoners, not from any specific acts of their own, but principally because they belong to some one of them as mem-

bers, it is plain that all who have at any time belonged, or yet belong to them, are equally implicated in guilt, and equally subject to death under the law. How many tenants at the will of the ministers are upon this principle to hold their lives in Great Britain? All the hundred and eighty delegates who met at Edinburgh, and all the thousands who sent them, are of that description; and thousands more in every populous town in this part of the kingdom.

Let every man, therefore, be responsible for his own acts, and not for the writings and opinions of others, and more especially of others whom he never saw or heard of. When men co-operate for some **PUBLIC** object, which in common they agree in, it can never happen that they shall agree in *every thing* belonging to it; nor is a man's opinions ever to be taken, even by the result of the resolutions of those with whom he associates for an avowed object.—I shall exhibit to you a proof of this in one of the most enlightened men that England ever bred, and to whom she owes unparalleled obligations. I mean to call Mr. Fox, who will tell you that he was a delegate for Westminster, in the year 1780, when a convention was held to consider of the best means for obtaining a reform in Parliament; his opinions were always adverse to universal suffrage, yet, nevertheless, his name appears to the petition which asked it of the House of Commons, being signed to it as chairman of the body; governed by its majority, and bound to give effect to its proceed-

ings. In the same manner vicious men may mix themselves among the honest, with the ulterior design of establishing evil upon the basis of what is good: it ever must be so in all the transactions of the world; and parts of the evidence may lead to a suspicion, that it might be so in the present instance; but for that very reason a Jury ought to be the more abundantly cautious of the effect of foreign and irrelevant matter; and should examine into each man's guilt or innocence, by his own individual conduct.

Gentlemen, I have hitherto insisted upon the views of the Constitutional Society as they are to be collected from its origin and its acts; and I am equally prepared to show (indeed it most decisively appears already, by every thing which has been proved by the Crown), that the objects of the Corresponding Society were precisely similar; that they were avowed by their original institution, which they published to the world; and which, though published upwards of three years ago, and though ever since in most extensive circulation, were not by the Crown even considered as in any respect injurious or illegal;—yet now, after having for all that time been transcribed into every newspaper, and sold publicly by every bookseller in the kingdom, without even a common information being put upon the file against any printer for a libel, they have been suddenly got together, not against their authors, but against a stranger to their very existence, and

have furnished the elaborate commentary upon the statute of high treason, which you have been obliged to listen to for so many days together.

Let us now examine the original institution of the Corresponding Society, and see whether in sobriety and fairness it furnishes the remarks which have been made upon it.

It is charged with the introduction of dangerous novelties—yet on the very front of it where they set out with describing their objects, they say—“Laying aside all pretensions to *originality*, we claim no other merit than that of *reconsidering* what has already been urged in our common cause, by the Duke of Richmond, Mr. Pitt, and their then *honest party*, years back, and persevere in supporting with candour and zeal the banners of truth already displayed by them.”—Now I ask any person, who will only consent to exercise the common candour of a gentleman (to say nothing of the scrupulous reserve of criminal justice), whether it was possible for a society, whose object was to persevere in the cause which Mr. Pitt and the Duke of Richmond had originated and deserted—better or more distinctly to express it. The language is most precise and unambiguous—but it seems that it is all *colour and deceit*;—it may be so—but they who assert that a man's meaning is the very reverse of his expressions, must prove that variance as a matter of **FACT**, by comparing his conduct with his declarations.—Has any such proof been given in the

instance before us? So far from it, that we are now upon the second trial, after the acquittal of Mr. Hardy, who stood before a Jury to answer for **THIS VERY PAPER**, of which he was the **AUTHOR**, and to which his **NAME** was signed. The whole object of that trial was to show this variance between the conduct of the Society, and this its original and public profession; with what success the late verdict has recorded: not a witness appeared for the Crown who did not prove the very reverse of the imputation; and though possessed as it was of the most private papers of all whom rashness thought fit to suspect, not a scrap of writing was produced to establish any departure from the open avowed objects of their institution: *yet, notwithstanding the acquittal of the avowed author and publisher of this paper, to the expressed satisfaction of the Court and country, it is now read over again as evidence, and vehemently insisted upon with the very same arguments which had been before rejected, with this difference only, that instead of being urged as formerly against him who was accountable for its contents, they are now employed against a gentleman who does not appear from any proof to have been even acquainted with its existence; and who began, and had been pursuing his object (whatever it was), for years before the paper had a being, which is used to decypher his intentions.* How completely is the Lord Chief Justice's argument subverted, and torn to pieces, by this procedure!— So far from sanctioning the principle, that men are

not entitled to the benefits to be derived from a fair construction of their expressions, his Lordship told the Jury, that, in a case so highly penal, they were not even strictly to be bound by their literal interpretation: yet you are now gravely asked to condemn to death the gentleman at the bar, by taking the meaning to be directly the reverse of what language has established, although all the extrinsic evidence by which alone such a latitude of judgment could be endured, falls in with and supports the ordinary construction of the writing.

The logic by which this mode of judgment is established keeps pace in novelty with the proposition itself: "People may talk of their loyalty," says the Solicitor General, "and of their love for the "constitution, when nothing like it is in their "hearts. Lord Lovat did so when he was plotting "the destruction of his country." Surely this observation is hardly worthy of so learned a man—Lord Lovat *took up arms against the King*; he was actually taken in open and banded rebellion; and, therefore, to be sure, any thing he might have said or written upon the subject of his principles or intentions could be of no avail: whatever he might have *said or written, his open deed condemned him*. If a man holds a knife to my throat to destroy me, it is in vain for him to say he loves me.—But to give the case of Lord Lovat any bearing upon the present, you must first prove that our design was to arm; and I shall then admit the argument and the con-

clusion. But has any such proof been given upon the present trial? It has not been attempted—the abortive evidence of arms has been abandoned—even the solitary pike, that formerly glared rebellion from the corner of the Court, no longer makes its appearance; and the knives have retired to their ancient office of carving. Happy was it, indeed, for me, that they were ever produced; for so perfectly common were they throughout all England, and so notoriously in use for the most ordinary purposes; that public justice and benevolence, shocked at the perversion of truth in the evidence concerning them, kept pouring them in upon me from all quarters. The box before me is half full of them; and if all other trades should fail me, I might set up a cutler's shop in consequence of this cause.

The next passage of the original institution, which the Solicitor General selected for observation, is precisely of the same sort. It is impossible to support his argument on it without confounding the whole structure of language—If (say they) we can once *regain* an annual Parliament, to be fairly chosen by the people, they will then be RESTORED to their just share in the government of their country. The expression is, REGAIN annual parliaments—yet the charge is, that the constitution was to be wholly subverted, and a new and different one established.—How is it possible to REGAIN that which was never before established?—How were they to *regain* that which they were themselves to

invent, and to create?—How was that to be *restored* which *never before* had an existence?

The next accusation against the Corresponding Society is so manifestly and so glaringly unjust, that I feel I have a right to complain of its introduction; though not of its introduction by my learned friends, who were bound to lay before the Jury all the materials which the two Houses of Parliament, representing the nation, had adopted upon the subject; the Attorney General was undoubtedly bound in justice to the Prisoner, as well as in deference to Parliament, not to garble the proceedings, but to submit *the whole of them* to your consideration. I have no complaint against *him, or against any of the honourable men who assist him*. So far from it, I have nothing more at heart, at this moment, than that the impression of my observations should reach beyond the Court, and affect **THE ATTORNEY GENERAL HIMSELF**, whose candour and integrity I know will be open to receive them. It was impossible he could know what he has learned from the evidence in the last cause, or what he is yet to learn from it in this.—And as I foresee that the most beneficial consequences may arise to others hereafter, from the subject being seen by my learned friend in its true and genuine colours, I shall, whatever may be the labour to myself, proceed in the detection of the fallacies which have been heaped on one another, though many of them have little or no application to the defence I am now engaged in.

My Client, indeed, generously imposes this burden : as he looked only to the general happiness, in the conduct which brings him a prisoner before you, without any possible view of advantage to himself, so he now looks anxiously round him with the same generous and independent spirit, and enfeebles, by expansion, the argument of his own innocence, that it may extend to protect the innocence of others, and to vindicate the freedom of his country.

Gentlemen, the accusation which the House of Commons made part of its Report, and the injustice of which I complain, is, that the Corresponding Society had no sooner been established, than a Society at Norwich wrote to them to know the object of their institution ; and that so conscious were they that their designs were different from their public professions, that, instead of at once appealing to their printed institution, to speak for itself upon the occasion, they wrote a dark, guarded, enigmatical letter, in order to conceal a purpose which could not with prudence or safety be revealed. I confess, I never in my life was so much surprised as at the impudence and falsehood of this assertion ; for I maintain, that it is not possible for language to furnish an answer more explicit, nor one that in more direct terms *did* appeal to their public declarations for their designs. I will read to you the very words of the correspondence : the Norwich Society say—
“ Our principal design in writing, is, that we may
“ have an opportunity of knowing more exactly

“ what may be thought the most eligible steps to
“ be taken, in carrying on this great business of our
“ associated brethren, and to have an opportunity
“ to ask such sort of questions as may be thought
“ very reasonable among the brethren; especially
“ when we think that publications are covered with
“ a sort of obscurity in it, as the Sheffield people’s
“ declaration, which seemed determined to support
“ the Duke of Richmond’s plan only; but since we
“ find, in a printed letter received from them in a
“ book, that they mean to abide by some moderate
“ reform, as may hereafter be brought forward by
“ the Friends of the People, which method is un-
“ certain to us. Again, we find that the Friends
“ of the People, and the Society for Constitutional
“ Information, do not exactly agree;—we could be
“ glad to know the reason. It seems to me as
“ though the difference was this—The Friends of
“ the People mean only a partial reform, because
“ they leave out the words expressing the Duke of
“ Richmond’s plan, and talk only of a reform;
“ while the Manchester people seem to intimate,
“ *by addressing Mr. Paine, as though they were*
“ *intent upon republican principles only.* Now, to
“ come closer to the main question, it is only de-
“ sired to know whether the generality of the So-
“ cieties mean to rest satisfied with the Duke of
“ Richmond’s plan only; OR WHETHER IT IS
“ THEIR PRIVATE DESIGN TO RIP UP

“ MONARCHY BY THE ROOTS, AND
“ PLACE DEMOCRACY IN ITS STEAD.”

This is the letter, the language of which has been so mightily relied upon, and which is printed in italics and capitals in the Reports of both Houses of Parliament. But what, in the first place, have the Corresponding Society to do with the language of this letter ; and how, in common decency or common sense, can it affect **THEM** ? Is it to be endured that treason shall be fastened upon **ME**, because I am absurdly or impertinently asked whether my intentions be traitorous : unless my previous conduct or declarations have excited a reasonable suspicion, or unless the evidence of bad intention can be collected from **MY ANSWER** ? If my *answer*, indeed, furnishes conclusion against me, that is quite another thing. Let us, therefore, examine *that* ; for the **QUESTION** is no evidence at all but as it is introductory of the reply : yet, would you believe it ?—the *answer* is not even printed, that I can find, in the Reports ; it is wholly suppressed ; and is only introduced, by the candour of the Crown, in the conduct of the prosecution. The answer, which bears date the 26th of November 1792, begins, as was natural, with recapitulating the questions put to them, nearly in the language of the letter itself ; and then they say—“ And as to the object we have “ in view, we refer you to our addresses ; you will “ therein see we mean to disseminate political “ knowledge, and thereby engage the judicious

“ part of the nation to demand a *restoration* of their
“ rights in ANNUAL PARLIAMENTS ; the members of
“ those Parliaments OWING *their election to the un-*
“ *bought, and even unbiassed, suffrage of every*
“ *citizen in possession of his reason, and not incapaci-*
“ *tated by crimes.*”—This is the answer of the Cor-
responding Society. And having set myself to rights
with my Learned Friends at the Bar, but meaning to
extend my courtesy no further, because justice con-
fines it to *them*, surely I have a right to ask whether
it be consistent with the dignity or character of a
great and august tribunal to accuse persons capi-
tally arrested, and before the season of their trial,
of having shrunk from questions put to them for
an exposition of their motives, *although they were*
possessed of the answer I have just read to you, which
refers the questions positively and unambiguously to
their original address ; which repeats the same legal
objects, if possible, with additional precision ; and
which tells them, that from these objects so a second
time delineated and expressed, they mean neither to
deviate to the right or left, but to pursue them by all
means consistent with the law and constitution of the
kingdom.

The next observation, which is made upon
the language of their proceedings, is still of the
same complexion, and turns round directly in their
support.

The charge, you observe, is for conspiring to hold
a Convention in England, in the year 1794, to

usurp the government, and to depose and destroy the King; all the papers and letters which have been read, with earlier dates, having been only produced to convince you that the Convention was projected for that detestable purpose. To establish this from their own compositions, Mr. Solicitor General says (he will give me leave to remind him of his expression), “Look to the language in which ‘they themselves speak of the proceeding in agitation—Let us agree to hold ANOTHER British Convention—What could this mean?” says my Learned Friend, *laying a strong emphasis upon the word ANOTHER*—“What could it possibly mean, “but a resolution to hold *another* Convention similar to that which had been held in North Britain, “consisting of delegates from the different Societies, “and which had been before dispersed by the authority of the law?” I TAKE HIM AT HIS WORD—IT COULD HAVE NO OTHER MEANING. They most unquestionably intended a Convention, similar, in all respects, to the one at Edinburgh, which had been suddenly dissolved; and consequently, upon his own principles, to make out a case of treason against the Prisoners who projected this ENGLISH Convention, he must show that the assembling the Convention at *Edinburgh* was an act of high treason in all who were engaged in it. To establish, upon his own principle of their designs being similar, that the English Convention was projected with the view of assuming and exercising all the functions of

Parliament, he is inevitably bound to show that the Convention at Edinburgh, of which it was a type, did actually assume and exercise them. Has he established either of these proofs?—Has he shown, by evidence, that the hundred and eighty persons who, as delegates from the different Societies in Scotland, assembled at Edinburgh under the name of a Convention, *did in fact* assemble to supersede the Parliament of the kingdom, and were guilty of the crime of high treason?—Has he shown (which, to maintain his argument, he is bound to do) that all those, who sent them for that purpose, were implicated in the same guilt?—If he has, he has struck at the lives of thousands and ten thousands of His Majesty's most affectionate subjects in North Britain, who were members of those Societies. Has he proved distinctly that this Edinburgh Convention *did actually assume to itself all, or any, of the functions of government*, which he says would have been assumed here, by the meeting in agitation, had it not been nipped in the bud by the arrest of the Prisoners, the seizure of their papers, and the institution of this solemn proceeding?

The Solicitor General having himself made this the question, as, indeed, he could not avoid it, let us examine what has been proved upon the subject. And in entering upon this duty, it really fills me with horror to think that the lives of men—what do I say—**OF MEN!**—that the lives of **ENGLISHMEN** should depend upon the successful resolution

of such a chaos of matter as is spread before me, in which every faculty of the mind is bewildered and confounded ;—that they should not only have *their own* writings to explain, and *their own* transactions to answer for, but that there should be heaped upon their heads every thing that has been said, written, or transacted, for years together, in every corner of the kingdom, by persons with whom they not only never acted, but whose names or existences they never heard of. If the criminal law of England countenances such a proceeding, how is the subject to contend with any prosecution which the Crown chooses to institute ?—Where is the man capable of assisting him upon such a trial ?—What purse is equal to the expense of witnesses ?—and where is the tribunal equal, in body and in mind, to its decision ?

In the first place, however, and before I proceed to explore the proceedings of the Edinburgh Convention, in the best way I can, through the maze of materials before us, let me ask, as a preliminary question, *what the honourable gentleman, whom I represent, had to do with them ?—Supposing all its transactions had been treason, how is he affected by them ?*—It has been assumed that Mr. Tooke was an active promoter of the Scotch Convention, because his name stands entered in the books of the Constitutional Society, as present when the sending of a delegate to Edinburgh was under deliberation. Good God ! Gentlemen, how gross is this conclusion, and how per-

nicious is the principle which concludes it!—This entry would not be evidence in an action for ten pounds; yet what would not do upon such an occasion, or upon a charge for killing a hare or a partridge, is to be used as evidence to destroy the life of an English subject, and with it the law and constitution of the kingdom.—The Society has been considered as a corporation;—its books have been laid upon the table as authoritative acts, binding upon all its members; and the pen of the secretary of a club is to conclude upon a fact which is to affect life.—The real truth is (*and it ought to be a solemn warning to Courts of Justice not to depart from the strict rules of evidence*), Mr. Tooke was NOT PRESENT when the proposition for sending a delegate to Edinburgh was made; neither did the proposition, when made, on that day receive the concurrence or approbation of the Society, but, on the contrary, was objected to by the majority; not because they thought it criminal, but because they believed it to be useless. The further discussion of the subject was, therefore, postponed from the 25th to the 28th of October, when a special extraordinary meeting was appointed, and Mr. John Williams, the mover of the proposition, was sent to Wimbledon to request Mr. Tooke to attend and support it; but it appears by Mr. Adams's evidence that he absolutely refused to come, and treated the proposal as frivolous and impertinent, insomuch that he was considered as a man bribed and pensioned to betray the

cause of parliamentary reform, by withholding his support to a legal and well-meant proposition in favour of the proceedings in Scotland. Yet this gentleman, greatly advanced in years, and declining in his health, who was shut up *at this time, and long before*, within the compass of his house and garden at Wimbledon, where he used to wish an Act of Parliament might confine him for life—who was painfully bestowing a greater portion of his time to the advancement of learning, than the rudest health could with safety bring to it—who was intensely devoted to researches which will hereafter astonish, and will not be soon forgotten by the world—who was, *at that very moment*, engaged in a work such as the labour of man never before undertook, nor perhaps his ingenuity ever accomplished—who had laid out near an hundred pounds only in packs of cards to elude by artifice and contrivance the frailty of memory and the shortness of life, otherwise insufficient for the magnitude of his pursuit—who never saw the Constitutional Society but in the courtesy of a few short moments, after dining with some of its most respectable members; and who *positively objected* to the very measure which is the whole foundation of the prosecution, is, nevertheless, gravely considered to be the master-string, which was continually pulling and directing all the inferior movements of a conspiracy as extensive as the island, the planner of a revolution in the government, and the active head of an armed rebellion against its

authority. Gentlemen, is this a proposition to be submitted to the judgment of honest and enlightened men, upon a trial of life and death?—Why, there is nothing in the Arabian Nights Entertainments, or in the Tales of the Fairies, which is not dull matter of fact compared with it.—But the truth is, as it stands already upon Mr. Adams's evidence, that so little was the energy of the Society upon the subject, that, at the general, adjourned, and *extraordinary* meeting, which was to decide upon this great question, which Mr. Tooke thought so small a one, but upon which the fate of Great Britain is considered here as having depended, only seven people gave their attendance; and, although Mr. Yorke was chosen delegate to give countenance to the cause, and to former resolutions, yet there were obstacles to the completion of his mission, because the *ways and means* could not be provided for his support.

It appears also, by Mr. Adams's evidence, that the Constitutional Society, which, for the purposes of this proceeding, has been represented as a sanguinary and widely extended conspiracy, consisted only of a few gentlemen, who wished well to the cause of constitutional reform, which they were too honest to abandon, but too insignificant in wealth, or numbers, efficaciously to support: In order, therefore, to prevent themselves from being laughed out of a very honourable purpose, and to prevent the honest and independent part of the public from giving up the cause of reform, from the despair of

courtenance and support, they published in their resolutions thousands of papers which they never printed, and expended large sums which they never had.—I might, therefore, wholly decline all consideration of the Scotch Convention as impertinent and irrelevant, and if I were my own master I would do so; but the honourable gentleman who has a right to direct my conduct, with a generosity which must endear him to every body, even in this very moment, when he sees me preparing to measure my discourse by the exigency of his own particular defence, insists upon my meeting the Solicitor General upon the major proposition of his argument:—“I could maintain,” says my Client, interrupting his own Counsel in his own defence, “I could maintain that I am not criminal (you have already, indeed, amply maintained it); but *that is not enough*: when the lives of others, and the privileges of my country, are embarked in the controversy; I call upon you, therefore, Mr. Erskine, to maintain, *that there is no criminality*—I desire that the acts of others, through whose sides I am vainly sought to be wounded, in order that the reverberating stroke may pierce *them* the deeper, may be vindicated and explained.”—In obedience to the task-master, then, let us see what this Convention did:—

One of their first declarations, and which is preposterously relied on to prove their usurpation of the powers of Government, is in these words—

“ Resolved, That this Convention, considering “ the calamitous consequences of any act of the “ Legislature” — ACT OF THE LEGISLATURE!— Why, according to these Gentlemen, they were THEMSELVES THE LEGISLATURE, for the Legislature was gone, if their argument be founded, the moment the Convention sat. “ Resolved, That this “ Convention, considering the calamitous conse- “ quences of any act of the Legislature, which may “ tend to deprive the whole, or any part of the “ people, of their undoubted right to meet by them- “ selves, or their delegates, to discuss any matter “ relative to their rights, whether of a public or “ private nature, and holding the same to be totally “ inconsistent with the first principles and safety of “ society, and also subversive OF THE KNOWN AND “ ACKNOWLEDGED CONSTITUTIONAL LIBERTIES OF “ ENGLISHMEN.” Gentlemen, I must pause here, though in the very middle of a sentence, because every limb and member of it furnishes a decisive refutation of the charge. Here are men accused of having assumed the supreme authority, and as the subverters of English law, who are yet peaceably claiming, *under the banners of the law*, the indisputable privileges of subjects to discuss the rights which *that law* bestows. They then say, and here, it seems, lies the treason—“ We do therefore de- “ clare, before God and our country, that we shall “ pay no regard to any act which shall militate “ against THE CONSTITUTION OF OUR COUNTRY.”

But, according to the other side of the table, the constitution of the country was at an end, and all its powers assumed by this Convention, although, in the very proceeding which they thus most unaccountably select for commentary, they bow obedience to all acts *consistent with the constitution*, and only refuse it to such as, in their minds, militated against the first principles of the English Government, which they were determined to support, instead of being banded to overturn. But, in what manner, and to what extent, did they project a resistance to acts militating against their rights? Did they meditate, by force, the destruction of Parliament which infringed them? Listen to the conclusion of this declaration, upon which so much has been said, and then tell me whether this body can, with common decency or justice, be charged as in a state of rebellion. “*We will continue to assemble to consider the best means by which we can accomplish a real representation of the people, and annual Parliaments, until compelled to desist by superior force.*” What is this but saying, that they will, for an honest end, abide the penalties of an unjust law, rather than escape from them by its observance? Mr. Justice Blackstone truly says, that there is nothing even immoral in such disobedience—for that, if there were—prohibitory and penal regulations would be snares to the conscience of the subject. The fact is, there never had been a law in England, nor was there any then in exist-

ence, to prohibit the measures they were engaged in. An act which had just been passed in Ireland had, for the first time, declared such proceedings to be a misdemeanor, though without an act we are now treating them as high treason; and the introduction of a similar bill into the English Parliament being the common report, they resolved not to sanction its unconstitutional principle, much less before the law existed, by a *voluntary* obedience, but to wait its regular enforcement by the magistrates.—This is not only the obvious meaning of the resolution itself, but it is established beyond a doubt, by their subsequent conduct, as it appears by the letter of Margarot, the delegate of the Corresponding Society, who, giving an account of their dispersion by the magistrates, as I shall presently read it to you, expresses himself to this effect—“ If,” says he, “ we had desisted without the exertion of superior force, it would have been surrendering our rights, and the privileges of others; but, when called upon by superior force, *i. e.* by the authority of the magistrate, the submission could not be considered as an acknowledgment of transgression on our parts.”—The dissolution of this *Parliament* (as it is gravely styled) is described, by Margarot’s letter, to have been effected thus:—“ Two messengers came again into our room with Gerald; they left a summons to appear at ten o’clock: with Margarot they left nothing but a request to accompany Gerald to the office; yet,

“ when arrived there, he found that a warrant was
“ issued against him for the purpose of detaining
“ him a prisoner. On Thursday the whole Con-
“ vention were equally ill used ; the Provost went,
“ and after pulling Matthew Campbell Brown, of
“ Sheffield, out of the Chair, ordered the Conven-
“ tion to disperse, and told them, he would allow
“ no such meetings in future. The next day, the
“ Convention having agreed to meet at another
“ place out of the jurisdiction of the Provost, we
“ had not long been assembled, before the Sheriff
“ appeared amongst us, and having asked whether
“ the meeting was the British Convention, and
“ being answered in the affirmative, ordered us to
“ depart. He asked who was President—upon
“ which Margarot, having openly asked and ob-
“ tained leave from the Convention, placed him-
“ self in the chair, and told the Sheriff he would
“ not break up the meeting, *unless unconstitutionally*
“ *forced thereto, by the Sheriff's pulling him out of*
“ *the chair* ; which the latter, after some hesitation,
“ complied with. The ex-president, Gerald, was
“ then put into the chair in order to be pulled out
“ by the Sheriff also, which being done, the meet-
“ ing was then closed with prayer, and the company
“ departed peaceably.” Now, does the whole his-
“ tory of human folly furnish any thing so extra-
“ gantly absurd and ridiculous, as to consider this as
“ the suppression of an extensive and armed rebellion,
“ and as a sort of counter-revolution in Great Britain ?

Upon the trial of a solemn and important cause, upon which not only the lives of innocent men are depending, but the existence of the laws themselves under which we live, I am afraid to run into observations which are ludicrous; but such is the preposterous nature of this whole business, that it is impossible to avoid it. In reading the minutes of this Convention, as the regular proceedings of a Parliament, holding at once the sword and purse of the kingdom, we have frequently encountered with matter which, whether we would or no, has convulsed us with laughter in the midst of the awful duty we are engaged in. In the minutes of the fifth day, the 21st of November 1793, we find the Deputy Secretary informing the Convention that he had last night received fifteen shillings from six visitors, which was ordered to be paid to Mr. Skirving, with three shillings more already collected; and, on the day following, we have Mr. Margarot moving (I suppose in the Committee of Ways and Means), that a general collection should be made, which being consented to, and Mr. Callendar and Mr. Scott being appointed collectors, these gentlemen made their report instanter:

	<i>£. s. d.</i>
That there had been drawn	- - - 4 5 8
But of which there being <i>two bad</i>	
<i>shillings</i> , the balance was	- - - 4 3 8

To which a person of the name of Moore added a

shilling. Yet this assembly of poor unarmed people, collecting sixpences to pay for their room and their advertisements, who were dispersed by a common Justice of the Peace, with less bustle than a watchman puts an end to a brawling in the corner of a street every night throughout the year, are now considered as having intended to assume to themselves, and indeed, for a season, to have exercised all the functions of this great country, protected as it is by a vast standing army, by a national militia, consisting of all the gentlemen of England whose landed interests depend upon the stability of the Government, and by the great body of opulent merchants and monied men, whose fortunes are vested in the public funds, and thereby their possessions and the hopes of their families entwined with the very bowels of the state.

There is another point of view, from whence if we examine this proceeding, it must appear, if possible, still more extraordinary. I admit that, in consequence of the dispersion which they considered to be illegal, a great many inflammatory papers were written; and that it was thought advisable, upon the whole, to subject the principal persons engaged in this Convention, to a legal prosecution. But how were they prosecuted? and by that very Government which has instituted the present proceedings? Were they prosecuted for high treason?—No.—Was the charge of treason ever thought of, or connected with their names?—I ANSWER, NEVER.—Al-

though they were not met together, like Mr. Hardy and the other unfortunate Prisoners, to consider how they *should in future* hold a convention, but were taken, *flagrante delicto*, *in the very act of holding one*, and of holding precisely such a one as the Prisoners are charged with having only projected; **THEY WERE ONLY ACCUSED OF A MISDEMEANOR.** I repeat the expression, they were only prosecuted for a misdemeanor, *although taken in the act of holding precisely such a convention as the Prisoners only projected.* For I again refer to the Solicitor General, whether he did not *twice* assert, and his learned co-adjutor *more than twice*, that the conspiracy charged upon the record was to hold a convention *similar to that which had been held and put down in Scotland.*

I assert also that Government had the same materials in its hands for conviction which it has at this hour—they had spies in every corner.

—“There was not a man
“But in his house they had a servant feed.”

And the minutes of the Convention, which have been read at your table as evidence of high treason, were seized by the Provost and Sheriff of Edinburgh, in 1793, and read as evidence against Margarot and Gerald, when prosecuted *only for libels* in the Justiciary Court.

What shall we say then of a government which lays a snare for innocent blood, by giving to an act the character of a misdemeanor, waiting for future

victims when it should be exalted to the denomination of rebellion and treason. Gentlemen, I make no such charge upon Government—I acquit them of all schemes upon the subject, good or evil—I believe that the fit of alarm came very suddenly, and very lately upon them ; and that they do not know, even now, upon what principle they are here, or what they have to hope from their proceedings.

The magistrates of Edinburgh having brought the leaders of the Convention before the Court of Jus-
ticiary, they were convicted of misdemeanors ; but these judgments, instead of producing the effect that was expected from them, produced (as ever happens from perverted authority) great irritation and discontent. They were, in my mind, and in what is far more important, in some of the greatest minds in this country, **ILLEGAL PROCEEDINGS.** And although I do not mean, in this place, to make any attack upon magistrates in the execution of their duty—

Lord Chief Justice Eyre. It should not be stated here that they were illegal.

Mr. Erskine. I did not say they were illegal—I said, *that IN MY OPINION they were so, and that they were questioned in Parliament as such.* It is not my purpose to give offence to his Lordship, who has given us an indulgent and attentive hearing through the whole course of this cause ; but it is material to state, because it accounts for some of the writings in evidence, that the opinion and conduct

of the Scotch Judges *were questionable*; that they were actually questioned in Parliament (AS THEY MAY YET HEREAFTER BE QUESTIONED); and were pronounced by the greatest men in both Houses of Parliament, to have been harsh, unconstitutional, and illegal. Smarting, therefore, under the lash of these sentences, which they considered to be unjust, and believing that their colleagues had done nothing more than the law authorized, and their consciences suggested, they came to an intemperate resolution concerning the Scotch Judges, which, though so strongly relied on, can certainly have no sort of application to the cause, since if they had knocked on the head the Lord Justice Clerk and all his brethren, while presiding in their Court, instead of contenting themselves with libelling them, it would not have been high treason within the statute of Edward the Third. This mighty bugbear of a resolution is in these words.—I am not afraid to meet it :

“ Resolved, That law ceases to be an object of
“ obedience whenever it becomes an instrument of
“ oppression.”

This is a mere abstract proposition, to which I would subscribe my own name at any time.

“ Resolved, That we call to mind, with the
“ deepest satisfaction, the fate of the infamous
“ Jefferies, once Lord Chief Justice of England,
“ who, at the era of the glorious Revolution, for
“ the many iniquitous sentences he had passed, was
“ torn to pieces by a brave and injured people.

“ Resolved, That those who imitate his example, “ deserve his fate.”

Gentlemen, if the application of this maxim was meant to be made to the recent proceedings of the Scotch Judges, it may be a libel upon *their* persons and authority for any thing I know or *care*. I see nothing that is either criminal or indecent. In my mind, on the contrary, the promulgation of such awful and useful reflections should not be left to the irregular, and often misapplied promulgation of private men, but should be promulgated at solemn festivals by the authority of the State itself. There ought, in my opinion, to be public anniversaries of the detestable, as well as of the illustrious actions of mankind, in order that, by the influence of negative, as well as of positive example, the greatest possible hold may be taken of the grand ruling passion of our nature, and the surest indication of its immortality—the passion of living in the minds of others beyond the period of our frail and transitory existence.—By such an institution, public men would every moment be impelled forward in the path of their duty by the prospective immortal rewards of an approving posterity; and, what is still more important, and far more applicable to my present purpose, wicked men, clothed with human authority over their fellow-creatures, would be deterred by the same means from the abuse of them; because, in the very moment when they were about to barter away the life of innocence, or the public

justice of their country, for some miserable advance of ambition in the decline of a transitory life, they might, perhaps, start back from the temptation, appalled by the awful view of future ages rising up before the imagination, sitting in judgment upon their characters, and proclaiming them with indignation to the universe.

But how, after all, do these resolutions (whatever praise or blame may belong to them) apply to the matter in hand? For Mr. Tooke positively refused to sanction them. Though Chairman of the meeting, he would not remain in the chair when they were passed; and I will call, if you think it material, the very person who took his place while they were passing. Yet, nevertheless, they are brought forward against him, and insisted upon with the same arguments as if he had been their author. Gentlemen, this is intolerable.—The whole history of human injustice can produce nothing like it.—*The principle seems to be, that all the libels written by any man in the world who at any time has supported a reform in Parliament, whatever may be the subject of them, and however clashing with one another in design or opinion, may be drawn into the vortex, and pointed to convict of high treason Mr. John Horne Tooke.* By reading these contradictory performances as the evidence of his designs, they make him one day a reformer of the House of Commons,—the next a rank republican,—the third well affected to our mixed constitution,—and the fourth

relapsing into a republican again.—In this manner, by reading just what they please, and insisting upon their own construction of what they read, the honourable gentleman is made to oscillate like a pen-dulum, from side to side, in the vibrations of opinion, without pursuing any fixed or rational course; although I will show you that, of all men in the world, he has been the most uniform, firm, and inflexible in his political course.

The next paper which they read is hardly, I think, at all connected with the important subject of the trial, being a mere squib upon the present just and necessary war. It is a resolution of the Constitutional Society of the 24th of January, to which Mr. Tooke was privy, in which it was resolved—
“ That an excellent address of the Corresponding
“ Society should be inserted in their books. And
“ that the King’s speech to his Parliament be in-
“ serted under it, in order that they may both be
“ always ready for the perpetual reference of the
“ members of this Society during the continuance
“ of the present unfortunate war—and that, *in*
“ *perpetuam rei memoriam*, they may be printed in
“ one sheet at the happy conclusion of it, which
“ happy conclusion, according to the present pro-
“ sperous appearances, we hope and believe not to
“ be many months distant.”

Gentlemen, surely it is not treason to believe that which Ministers are daily holding forth—surely it is not treason to expect and believe upon the authority

of Parliament, that the war we are engaged in will soon be brought to a prosperous issue. Would the people of this country have been so composed in a conjuncture, which for calamity has no parallel in the history of Great Britain, but for these constant declarations of the King's Ministers, which Mr. Tooke is only accused of having believed? Were we not told (*I am not entering upon political controversy, but defending my Client*)—But were we not told daily, that the war would be brought to a speedy and happy termination? And can it be criminal in a subject to give faith to the acts and declarations of Government? But supposing it, on the other hand, to be only irony upon Administration, and a ridicule of their proceedings, which may perhaps be the best construction:—is a man's life to depend in this country upon his admiration or support of any particular set of Ministers? I care not a straw what you, the Jury, who are to decide upon my Client's conduct, may think upon these topics, or upon the Ministers of the day;—I rely upon your judgments as honest men, impressed with a sense of religion, who know the sanctity of the oath you have taken, and the duty which it imposes, and I only introduce these subjects, not because I think them relevant, but because they have been thought so by the Crown who read these papers to condemn us.

But it is the *conclusion* of this resolution, I believe, which gives the offence, where, upon motion, the words “faithful and honourable,” which stood

applied to the Parliament, were expunged, and the words “ his, and his only,” inserted in their stead.—What then?—This is no denial of the fidelity of the King to his Parliament, but is an insinuation, on the contrary, that the Parliament was unfaithful to the King. If it can be considered, therefore, in the serious light of a libel upon *any* authority, it is a defamation of the *House of Commons*. But we are not brought here to answer for a libel upon that Assembly; we are accused of a conspiracy to cut off the King—and in order to prove it, they give in evidence an idle squib against the House of Commons, for not faithfully serving him; so that if the paper were deserving of any consideration one way or the other, it makes quite against the purpose for which it is used—unless it is meant to be contended, that the King and the House of Commons are one and the same thing.

Another matter equally irrelevant has been also introduced very fortunately, however, for the honourable gentleman at your Bar, because it affords a signal instance of his generosity and nobleness of mind. I speak of his letter promoting a subscription for Mr. Sinclair, who had been convicted in Scotland for acting as a delegate at the Convention.

Although Mr. Tooke not only never sent him as delegate, but strenuously objected to his delegation;—though he *so* uniformly opposed the whole measure which led to his conviction and punishment, as to lead to the question of his own sincerity in the

minds of some who supported it;—although the consequence of the sentence could not have pulled a hair out of his head, but led, on the contrary, to confirm the prudence and propriety of his conduct;—yet, in the hour of Mr. Sinclair's distress, he was the first man to step forward to support him, and to take upon himself the public odium of protecting him, though he had privately discountenanced every act which could give the sufferer any claim to his countenance or support. I am perfectly sure that my worthy friend the Attorney General is too honourable a man to make a single observation on this genuine act of disinterested benevolence.—But I am not the less obliged to Mr. Gibbs for not suffering me to omit in its place, a matter which redounds so highly to the honour of the gentleman we are defending.

It is the same spirit that dictated the other part of the letter which regards Mr. Pitt. Filled with indignation that an innocent man should be devoted to a prison for treading in the very steps which had conducted that Minister to his present situation, he says (I have mislaid the letter, but can nearly remember the expression), “That if ever that man should be brought to his trial for *his* desertion of the cause of parliamentary reform, for which Mr. Sinclair was to suffer, he hoped the country would not consent to send *him* to Botany Bay.”

Gentlemen, I have but one remark to make upon

this part of the letter: Mr. Tooke is not indicted for compassing and imagining the death of Mr. Pitt.

Gentlemen, we come at last to the very point of the charge, *viz.* the conspiracy to hold the Convention in England, and the means employed for that purpose;—and it is a most striking circumstance, a circumstance in my mind absolutely conclusive of the present trial (unless you mean to reverse the former Verdict, which none of you will, and which *all of you* certainly cannot), that Mr. Hardy, who has already been acquitted, was the very *first* and *single* mover of the proposition to hold this Convention—and that all the subsequent steps taken in the accomplishment of it, down to the day when the Prisoners were sent to the Tower, were taken *not only with his privity, but through his direct agency*; and that every letter and paper which has been read upon the subject, bears the signature of his name, many of them being also of his own composition. If the Convention, therefore, was originated for the detestable purpose charged by this Indictment, Mr. Hardy, who has been acquitted, was the original, and the principal traitor; whatever was known, **HE** certainly knew; whatever was done upon it, **HE** not only did, but actually led the way to the doing of by *others*.—If there was a conspiracy, **HE** was manifestly the principal conspirator.

This is no assertion or argument of mine—it was avowed by the Crown which now prosecutes Mr. Tooke—and Mr. Hardy was therefore *first*,

and most properly, selected for trial ; because the object of the one we are now engaged in, and of every other that can succeed to it, are only to apply by *remote implication* and *collateral* circumstances, the very acts which were *directly* brought home to Mr. Hardy, who stands acquitted by his country, nay, which were without controversy admitted by his Counsel. The Court said, in summing up the evidence in the former trial, that it had been but feebly argued that Mr. Hardy was not implicated in a great part of the evidence,

Gentlemen, this was but a cautious and indulgent mode of statement by the Court, lest admissions might be supposed to have been made by us which Counsel ought not to make ; for certainly we neither did, nor could attempt to deny that Mr. Hardy was cognisant of, and active in every transaction which regarded the British Convention, the very treason charged upon the record. The Attorney General, therefore, is reduced to this dilemma, either to contest the justice of the former verdict which acquitted Hardy, or to surrender the present prosecution. That this is the true position of the cause will appear uncontestedly from the proofs.

The origin of the Convention appears to have been this :—Mr. Hardy, who has already been acquitted by his country, having received a letter, which has been read to you, from a country correspondent, stating that as the Edinburgh Convention had been improperly and illegally dispersed, it would

be proper to hold another ; he laid the proposal before the Corresponding Society, who adopted it upon the 27th of March 1794, and transmitted a copy of their resolution upon the subject to the Constitutional Society for their approbation. Mr. Hardy, therefore, was not merely active as Secretary in the progress of the Convention, but was, *in his own person*, the first mover and proposer of it ; and it is impossible that the Jury could have honourably acquitted him upon any other principle than their total and absolute disbelief that the measure was pursued for the detestable purposes imputed by this Indictment.

Gentlemen, the best way to support that judgment, and to bring you to the same conclusion, is to examine the proceedings, and to let them speak for themselves.

The Corresponding Society, upon Mr. Hardy's proposition, having, on the 27th of March 1794, adopted a resolution which they transmitted to the Constitutional Society for approbation, that Society met the next day, the 28th of March, to consider it ; the resolution was sent in the form of a letter from Mr. Hardy himself, in these words :

“ I am directed by the London Corresponding Society to transmit the following resolutions to the Society for Constitutional Information, and to request the sentiments of that Society respecting the important measures which the present juncture of affairs seems to require. The London Correspond-

“ ing Society conceives that the moment is arrived
“ when a full and explicit declaration is necessary
“ from all the friends of freedom, whether the late
“ **ILLEGAL** and unheard-of prosecutions and sen-
“ tences shall determine us to abandon **OUR CAUSE**.”

To pause here a little—Does not this incontestably show that their **CAUSE** (with whatever irregularity it might have been pursued) was no other than the cause of parliamentary reform ;—is it not demonstration that they considered the persons convicted in Scotland as wrongfully convicted ?—It is not in human nature,—it is beyond the flight of human impudence or folly, that men under a government of law should publicly declaim against prosecutions as illegal, tyrannical, and unheard-of, if they had either themselves considered them, or if they had been held by others to have been the regular proceedings against traitors arrested in rebellion against their country. Construing, therefore, this part of the letter as common charity and common sense must concur in the construction, and as the former Jury construed it ; it is no more than this—They say to the Constitutional Society, “ As we are in the progress of an honest cause—as we are pursuing a legal purpose by legal means, which others have adopted before us ; shall we abandon it, terrified by the unrighteous judgments of another country ? or shall we unite and persevere in its support, confiding that whatever may be the condition of *Scotland*, there is no law here in

“ ENGLAND which can condemn us, nor any Judges
“ who can be interested in its perversion? Let us
“ concur, therefore, in the necessity of another
“ Convention, as the only legal and constitutional
“ means of redressing the grievances which oppress
“ us, and which can only be effectually redressed by
“ a full and free representation of the people of
“ Great Britain.”

The crime, therefore, imputed to the Constitutional Society is only this,—that, addressed in this manner by the Corresponding Society *so describing its objects*, it assented to the appointment of a Committee of their Society, to meet a Committee appointed by the other, to consider of the proper steps to be taken for the accomplishment of the object so described.

This is the whole that can be charged upon this Society; for there is no evidence whatever, even of any of its members being acquainted with the design of considering of a Convention, until it came to them in the shape of a letter from Mr. Hardy, who has been acquitted; all the antecedent part being ABSOLUTELY AND ENTIRELY HIS OWN. This proposition, indeed, was so far from coming to the Constitutional Society as the members of a secret conspiracy, that it was made in the most public manner to other Societies, with whom they notoriously were not connected; it was made to the Society of the Friends of the People, of which I have the honour to be a member, whose principles

and conduct have been spoken of with respect throughout these proceedings. When we received their proposal we were as well acquainted with all the antecedent proceedings of the Societies, as the evidence makes us acquainted with them now; and we still flatter ourselves that we were as capable of understanding the meaning of what was addressed to ourselves, as those who since then have assumed to themselves the office of decipherers; yet, with all this knowledge, we returned an affectionate answer to these **BLOODY CONSPIRATORS**;—we wrote to them, that we heartily concurred with them in the objects they had in view, but differed from them in the expediency and prudence of the means by which they had proposed to give them effect.—WE, therefore, understood their object in the same light with the Constitutional Society, *viz.* the reform in the House of Commons only; and the difference between us is reduced to a difference in judgment, as to the *means* for producing an end which in common was approved.

Gentlemen, the Constitutional Society having agreed, as I have just now stated to you, to appoint some of their members to confer with others appointed by the Corresponding Society, upon the subject of the resolution of the 27th of March, understood by them as I have explained it to you, we are brought by the evidence to the consideration of that overt act upon the record which charges these Committees so appointed with the crime of high

treason in these words—" That with force and arms
" they did traitorously consent and agree, that Jere-
" miah Joyce, John Augustus Bonney, John Horne
" Tooke, Thomas Wardle, Matthew Moore, John
" Thelwall, John Baxter, Richard Hodgson, John
" Lovet, William Sharpe, and one John Pearson,
" should confer and meet, and co-operate together,
" for and towards the calling and assembling such
" Convention for the traitorous purposes aforesaid :"
i. e. as it is agreed on all hands, for subverting the
Government, and deposing and destroying the King.
Here another dilemma inevitably encloses the Crown ;
because this charge of conferring together towards
the calling a Convention which was to be held for
these traitorous purposes, cannot possibly be urged
against these eleven persons appointed to confer to-
gether concerning it, unless the major proposition
can first be established, that such a traitorous Con-
vention was originally in the contemplation of those
who appointed them. For these *eleven* persons are
not charged as having *originated* the Convention,
but each Prisoner in his turn is charged with having
consented and agreed that these persons should confer
together upon the means to give effect to a treason
already hatched and contemplated, which inevitably
throws them back upon Mr. Hardy, who has been
acquitted ; for how, in the name of common sense,
can their guilt be consistent with his innocence ? I
say, this is a dilemma, because there is no road out
of this absurdity but by running into another ; since

to confine the guilt to the Prisoners who co-operated together in exclusion of those who appointed them to do so; it must be assumed that they were, *bond fide*, appointed to confer towards calling a meeting, which had for its real and honest object, a reform in Parliament: but that they were no sooner appointed, than, without the consent of those who had deputed them, they confederated to change the purpose of the deputation, and conspired among their eleven selves to form a Parliament for ruling by force of arms over this mighty kingdom.

Now, I appeal to you, Gentlemen, whether there ever was a proposition so utterly out of the whole course of human affairs, as that six men of one very numerous Society, and five out of another equally numerous, unanimously appointed to confer upon any given object, no matter what, should be taken without a shadow of evidence, to have in an instant departed from the trust reposed in them, and to have set on foot a secret plan which they durst not communicate even to their principals and co-conspirators, and which, with or without communication, was wholly visionary and impracticable.

Gentlemen, I know that my Learned Friends are incapable of publicly maintaining so preposterous a proposition; I admit that they never did maintain it, and I only state it to give to them the choice of the alternative; because either these eleven persons are only guilty from having changed the purpose of a deputation originally not traitorous, a thing ad-

mitted to be absurd and irrational, or else *all* who deputed them were traitors also ; the conclusion is inevitable ; because it is impossible to say that the Societies who deputed them did not know their own motives and their own objects ; and the supposition is further absolutely excluded by the evidence ; as the Committees so appointed were to do nothing of themselves, but were to report to the Society at large the result of their deliberations : and reports from them were accordingly actually read at the Society, in the presence of many respectable members now at large, and whose names have not been even mentioned as suspected in the course of these proceedings.

It is, therefore, impossible to impute guilt to the Prisoners selected for punishment, without extending it to a compass to which no man will be hardy enough to say, it shall or can be extended : how many persons upon such a scale would be principals in treason, or guilty of a misprision of it ? *Every man who attended the various Societies throughout the kingdom, or who knew, by belonging to them, that a Convention was on foot.* To say nothing of the extravagance of such a wide imputation of disloyalty and rebellion, what can be more dangerous impolicy than to invite foreign nations to believe, whilst attempts are making from abroad to destroy our constitution, that the people of England are already ripe for a revolt ?

But there are inconsistencies, if possible, still

more glaring to be encountered with in maintaining the charge against the Prisoners selected for trial, than even in this wide extension of it to others ; for if any of the few persons (*being only twelve in number*) be guilty of this treason, they must ALL be guilty ; it is quite in vain to think of distinguishing or separating them ; yet *some* of them are not even accused, and *others* are judicially separated from accusation :—Mr. Sharpe, the engraver, though one of the Committee, was examined for the Crown, but not examined as an accomplice : and the bill was thrown out by the Grand Jury against Mr. Lovett, another of them, whom I am, therefore, entitled to consider as an innocent man who ought not even to have been accused, and who will tell you upon his oath (for I shall call him as a witness) that there was not a syllable passed at these meetings, which the King upon his throne might not have heard ; that neither his name nor office were mentioned with irreverence ; and Lovett, speaking for himself, and for his own motives, will further solemnly tell you, that in his honest conscience he believed, that from the consequences of a timely reform in the House of Commons, *to which all their deliberations were singly directed*, the King's title would be more firm,—his person more secure,—his crown more illustrious,—and its inheritance in his line more certain,—than by seeking their support from the continuation of abuses which had so recently overturned a throne, that, propped as it was

by armies, and the bigotry of the people, seemed destined to endure for many generations, but which, nevertheless, undermined by its own corruptions, suddenly crumbled into dust, and shook, or more properly shakes at this moment, the whole habitable world with its fall.

That Mr. Richter, another of the Committee, and now in Newgate, meant nothing more than the reform in the House of Commons, I will prove to you by Mr. Rous, one of the most respectable men in our profession, and whose honour and veracity are above all question. He will tell you, that he saw him after the Friends of the People had refused to concur in sending delegates to the proposed Convention, when Richter assured him, that in the plan they had adopted they had acted for the best, but that they were desirous to act cordially with the Friends of the People in whatever they thought the most conducive to promote the constitutional object they were engaged in. I believe, indeed, that the mass of these Societies thought with many others, of which class I profess myself to be one, though I differ with them in the means, that nothing can so certainly tend to support the Throne as a reform in the Commons House of Parliament.—Whether you think with them or with me on this subject, is of no consequence—it is enough if you believe that *they thought so, and honestly acted upon their opinions*; opinions which at all events were entertained and acted upon by many

illustrious persons now present, some of whom I will call as the willing, and others as the unwilling witnesses to the fact.

But as the quality of their acts is best to be ascertained by the acts themselves, let us examine what the Committees did, and what was done by the Societies who supported them.

On the 11th of April they made their report in these words :

“ Resolved, That it appears to this Committee very desirable that a general meeting or convention of the friends of liberty should be called.” —For what?—to depose the King?—to subvert the Government?—NO. But, in the concluding words of the resolution, “ For the purpose of taking into consideration *the proper means of obtaining a full and fair representation of the people in Parliament.*” This resolution, *after some objection to the word Convention*, was adopted. Now, I desire distinctly to know why this resolution is to be perverted from its ordinary meaning any more than many similar resolutions in other times? The Lord Chief Justice in the former trial said, in so many words, that it must be conceded to these Societies, and to the prisoner Hardy, *that they set out originally upon the Duke of Richmond's plan.*—If this be so, it is for the Crown to establish *at what period, and by whom*, this system was abandoned, and what is the evidence of the abandonment.—Does the Attorney General mean to say that it is high treason

for a number of persons collected together to make a delegation to a smaller number from among themselves for any purposes, legal or illegal? He will certainly not say that.—So that, in whatever view the matter for deliberation is examined, the question still returns, and must for ever return to its only legal centre, *viz.* THE OBJECT THEY HAD IN VIEW in this delegation; and that examination cannot rationally take place but either by looking at the acts themselves, and judging of them *as they present themselves to view*, or else by showing, from *extrinsic* evidence, that they are *not* what they appear upon the surface, but are directed to concealed and wicked objects.

With regard to the first, it has been conceded from the beginning, even by the Court (as I have just observed in its charge to the Grand Jury), that their AVOWED object was a constitutional reform; and as to the last, I call aloud upon those who ask you to pronounce, that a forcible subversion of the Government was intended, to confess that the very idea of such a charge was disavowed and reprobated even by the very witnesses they brought forward to establish it. Upon the first trial they called a great number, who, without a single exception, one after another, positively swore that hostility to the Government, or an attack upon it by force, never entered into their contemplation; and Mr. Gibbs, as I am informed, in my absence to day, established the same truth by cross-examination of the Sheffield

witnesses, who, with one assent, as I see from a note now before me, all declared they had been insulted and abused, which was the origin of the few pikes manufactured for their defence ; and the Attorney General appears to have been so well satisfied, that the whole evidence concerning arms was “a beggarly account of empty boxes,” unfit for a second introduction in so momentous a cause, that he gave up the whole of it, and we have heard not a syllable of that which assumed so grave an aspect when Hardy lately stood in judgment before you ; nor has even Franklow himself, and the Loyal Lambeth Association, made their appearance.—In my opinion it was sound discretion to abandon that parol evidence. To have called people who literally knew nothing of the Societies, would have been to expose weakness ; to have again called honest witnesses, who knew any thing, would have been to prove too much, because the falsehood of the imputation would again have been manifested ; and to have attempted it a second time by spies and informers, would only have been uselessly bringing up their raggamuffins to be peppered : a conduct which sinks a cause in the opinion even of Jefferies himself, who, when Serjeant Jefferies, upon the trial of Lord Russel, said to the Jury—“ *Remember we bring no ignominious persons here ;—we have not raked the gaols for evidence ; we have brought before you no scandalous SPIES AND INFORMERS, but men worthy of credit.* ”

To say the truth, Gentlemen, their parol testimony being thus subtracted, there has been brought forward in this cause no evidence either creditable or scandalous: for, with the exception of a few papers not worth a farthing, I will undertake to collect from the coffee-houses of London a complete facsimile of the Report of both Houses of Parliament, which has consumed so many days in reading, and for no part of which, as I have noticed formerly, any author, printer, or publisher, has been ever called to account.

We have now reached the finale of the business—the great catastrophe—and it is awful to examine upon what small pivots the fate of nations depends, and to contemplate the miraculous escape of our country.—The two committees agreed to meet on Mondays and Thursdays in Beaufort Buildings, and no time was to be lost; for Hessians and Hanoverians were upon them.

When the 14th of April came, which should have been their first meeting, there was no meeting at all, but a great multitude of people, of different descriptions, assembled at Chalk Farm.—My Learned Friends, I see, are taking notes on this subject; but let them recollect, that Lovett, whose case has been before the accusing Jury, and who stands wholly discharged from guilt or suspicion, was Chairman of this meeting, and, at the same time, a member of the Committees of Conference and Co-operation; yet now when the leader himself is exculpated, and

not exposed even to the hazard and inconvenience of a trial, he is to be hung to-day round the neck of the gentleman at your bar, who never was at Chalk Farm in his life;—who never heard of the meeting, nor of the existence of the place it was held at, till he read it in the newspapers, as we all did, and who never saw Mr. Lovett till he met him in the Tower, when he was pointed out to him as one of the persons with whom he had long been engaged in a conspiracy. Thank God, these experiments are not only harmless, but useful:—they serve as a clue when the contrivance is more plausible.

The next Thursday after the meeting at Chalk Farm was the 17th of April. Now attend to the proceedings of these conspirators, pressed to a moment in point of time, and whose schemes were ripe for execution. Not one of them came.—The 24th of April was the third Thursday, when the Committee from the Corresponding Society attended, but, not being met by the other, there was, of course, no conference. On the 28th of April, full three weeks after their original appointment, they at last assembled; and, after having conferred concerning the news of the day, and co-operated in taking snuff out of one another's boxes, they retired to their homes without uttering a syllable concerning the King or his Parliament. These important transactions were repeated on the 5th of May; and on Monday, May the 12th, although no *other* meeting had then been held, and though these proceedings,

as I have stated them to you, had been fully investigated before the Privy Council; though the Societies were constituted for purposes perfectly notorious, and long unopposed; though all their meetings had been publicly advertised, and their correspondence as open as the day, Mr. Hardy was suddenly arrested—dragged out of his bed in the night—torn from the arms of an affectionate wife, who fell a sacrifice to terror and affright, although he can *now* tell you, upon an oath accredited by his full and honourable acquittal, that he had not a conception in his mind, even after he was in the custody of the law, that high treason, or any other crime which verged towards disloyalty or rebellion, was to be imputed to him.

Gentlemen, the alarm which seized upon Government at this period seems to have invested the most frivolous circumstances with mystery and design against the State, of which we have had a notable instance, in a letter written by Mr. Joyce to Mr. Tooke, on the day Hardy was arrested, which, being intercepted, was packed up into the green box there, and reserved as evidence of a plot. The letter runs thus—“ Hardy and Adams were taken up “ this morning by a King’s Messenger, and all their “ books and papers seized;” and then, following a long dash, “ CAN YOU BE READY BY THURSDAY?” —This letter, Gentlemen, is another lesson of caution against vague suspicions; the Red Book was not a list of persons to be saved, in opposition to

the Black Book, of those to be sacrificed ; but Mr. Fooke having undertaken to collect, from the Court Calendar, a list of the titles, offices, and pensions bestowed BY MR. PITT UPON MR. PITT, HIS RELATIONS, FRIENDS, AND DEPENDENTS, and being too correct to come out with a work, of that magnitude and extent, upon a short notice, had fixed no time for it, which induced Mr. Joyce, who was impatient for its publication, to ask if he could be ready with it by Thursday. Another curious circumstance, of similar importance, occurred about the same time, which I marvel has not appeared in evidence before you. I will tell you the story, which is so stamped with the wit which distinguishes my Client, that it will speak for itself without proof. A spy came one night into the Society to see what he could collect, when there happened to be present a Mr. Gay, a man of large fortune, and a great traveller (the gentleman I speak of is a member of the Friends of the People, introduced by my friend Mr. Tierney, now in my eye). This Mr. Gay, in the course of his travels, had found a stone inscribed by Mr. Stuart, another great traveller, as the end of the world ; but resolving to push on farther, and to show his contempt of the bounded views of former discoveries, wrote upon it, " This is the *beginning* of the world,"—treating it as the ground from which he meant to start upon his tour. The plan being introduced for consideration while Mr. Gay was present, Mr. Tooke said, " Look ye, gentle-

" men, there is a person in the room disposed to " go to GREATER LENGTHS than any of us would " choose to follow him." This allusion to the intrepid traveller was picked up by the spy as evidence of the plot ; and if I had the rummaging of the green boxes, I would undertake to find the information among the papers.

Gentlemen, in tracing, as I have done, the proceedings of the Societies towards holding this Convention, I have continued to follow the instructions of my Client, in totally losing sight of *his* defence, in order to keep danger at a distance from *others* ; for I have now only to remind you, since the fact has appeared already, that the Prisoner took no share whatsoever in any of these proceedings.—He considered them, indeed, to be legal, but, in his enlightened judgment, not convenient, nor likely to be attended with advantage to the object ; and, therefore, when the resolution of appointing a Committee was adopted, and his name was proposed as a member, he objected to it, declared he would not attend, nor have any thing whatever to do with it. You may ask, perhaps, why, after that refusal, he suffered his name to stand upon the Committee?—and why he did not withdraw himself wholly from the Society?—In answer to that, he has told you much better than I can, as he can, indeed, tell you any thing much better, that as he considered the proposition not to be criminal or illegal, he did not feel himself at liberty to abandon a laudable pursuit by breaking

up or dividing the Society, for mere difference of opinion with respect to the mode of obtaining it. This conduct was manly and honourable, and it by no means stands upon Mr. Tooke's assertion: the fact, and a most important one it is, rests upon evidence, and not upon *our* evidence (for our season of giving it is not yet arrived), but upon the evidence *relied on by the Crown for the establishment of guilt*; and which, therefore, must be wholly adopted, or wholly rejected.

It will appear further, and more distinctly, that Mr. Tooke persisted in his resolution;—that he was a total stranger to their proceedings;—that the Committee of Correspondence, of which he objected to be a member, never met; and that the only reason why his name stands as a member of the Committee of Correspondence, which he not only did not assent to, but the formation of which he never knew, was, that it was resolved, in his absence, that the Committee which had before been appointed to *confer*, should also be a Committee to *co-operate*; and of so little account was this same Committee, that Mr. Adams, when examined for the Crown (though Secretary of the Society), declared, upon his oath, that he never had heard of it until he read it out of the book, as a witness in the Court.

It is evident, therefore, that the great substantive leading overt act in the Indictment, *viz.* the conspiracy to hold a Convention to subvert the Govern-

ment, to which all the other charges are undoubtedly subservient, is not only not brought home to the honourable gentleman at the Bar, but appears to be without foundation altogether; and it is equally evident, by the conduct of the Crown, they *they* think so; for, if they had proved their charge by the evidence of the facts which belonged to it, their task was finished; and all matter, collateral or foreign, would not only have been irrelevant, but injurious to the prosecution; but, conscious that the traitorous intention could neither be legally nor rationally collected from any one fact appertaining to the subject in agitation, they have heaped matter upon matter on his head from various quarters, totally disconnected with the charge, and with one another, in order that these transactions, though singly neither treason, nor any other crime, might, when tacked together, amount to whatever might be found necessary to destroy him. In this manner that unfortunate statesman, Lord Strafford, was sacrificed; but the shameful violation of the law of England, which alone could have supported his condemnation, has ever been spoken of with detestation by every lawyer, of whatever party, who has lived since his trial; and what is the next evidence of its turpitude and illegality, has been considered as a blot in the page of English history, by historians of all parties and opinions. Mr. David Hume, a man not to be named as a compiler of mere facts, but as a profound politician and philosopher, speaks of it

in the manner which I will read to you, notwithstanding his leaning to high and arbitrary principles of government. In his sixth volume, page 431, speaking of Lord Strafford's attainder, he says, "As this species of treason, *discovered* by the Commons (the Commons have also the merit of discovering this), " is entirely new and unknown to the laws; so is the species of proof by which they pretend to fix that guilt upon the Prisoner. They have invented a kind of *accumulative* or *constructive* evidence, by which many actions, either totally innocent in themselves, or criminal in a much inferior degree, shall, *when united*, amount to treason, and subject the person to the highest penalties inflicted by the law.—A hasty and unguarded word, a rash and passionate action, assisted by the malevolent fancy of the accuser, and tortured by doubtful constructions, is transmuted into the deepest guilt; and the lives and fortunes of the whole nation, *no longer protected by justice*, are subjected to arbitrary will and pleasure."

Gentlemen, it may be said that the shameful case I have cited is not like the present. Certainly it is not—for the unguarded words which the historian reprobates the enhancing into treason, were the unguarded words of *Lord Strafford himself*; the rash writings were *his* writings; and the passionate actions were *his own*. But what is accumulated and lifted up into treason against the Prisoner to-day, are the unguarded words,—the rash writings,—and the pas-

sionate actions of *others* ; of some with whom he differed ; of many whom he never saw ; and mostly of those to whose very existence he was a stranger.

Gentlemen, I have no fears for my Client ; but in what language shall I speak of this dreadful principle for the benefit of my country ? I will speak of it in the language of the innocent victim to them ;—in the eloquent words of Lord Strafford himself upon his trial.

“ Where has this species of guilt lain so long concealed,”—said Strafford in conclusion:—“ where has this fire been so long buried, during so many centuries, that no smoke should appear till it burst out at once, to consume me and my children ? Better it were to live under no law at all, and, by the maxims of cautious prudence, to confine ourselves, the best we can, to the arbitrary will of a master, than fancy we have a law on which we can rely, and find at last, that this law shall inflict a punishment precedent to the promulgation, and try us by maxims unheard-of till the very moment of the prosecution. If I sail on the Thames and split my vessel on an anchor, in case there be no buoy to give warning, the party shall pay me damages : but if the anchor be marked out, then is the striking on it at my own peril. Where is the mark set upon this crime ?—Where the token by which I should discover it ?—It has lain concealed, under water ; and no human prudence, no human innocence,

“ could save me from the destruction with which I
“ am at present threatened.

“ It is now full two hundred and forty years since
“ treasons were defined ; and so long has it been
“ since any man was touched to this extent, upon
“ this crime, before myself. We have lived, my
“ Lords, happily to ourselves at home :—we have
“ lived gloriously abroad to the world :—let us be
“ content with what our fathers have left us :—let
“ not our ambition carry us to be more learned than
“ they were, in these killing and destructive arts.
“ Great wisdom it will be in your Lordships, and
“ just providence for yourselves, for your posterities,
“ for the whole kingdom, to cast from you, into
“ the fire, these bloody and mysterious volumes of
“ arbitrary and constructive treasons, as the primi-
“ tive Christians did their books of curious arts,
“ and betake yourselves to the plain letter of the
“ statute, which tells you where the crime is, and
“ points out to you the path by which you may
“ avoid it.

“ Let us not, to our own destruction, awake
“ those sleeping lions by rattling up a company of
“ old records, which have lain for so many ages by
“ the wall, forgotten and neglected. To all my
“ afflictions, add not this, my Lords, the most se-
“ vere of any ; that I, for my other sins, not for
“ my treasons, be the means of introducing a pre-
“ cedent so pernicious to the laws and liberties of
“ my native country.

“ However, these gentlemen at the Bar say they
“ speak for the commonwealth; and they believe
“ so: yet, under favour, it is I who, in this par-
“ ticular, speak for the commonwealth. Prece-
“ dents, like those which are endeavoured to be
“ established against me, must draw along such in-
“ conveniences and miseries, that, in a few years,
“ the kingdom will be in the condition expressed in
“ a statute of Henry IV. and no man shall know by
“ what rule to govern his words and actions.”

Proud as I am of being a subject of this country, my duty compels me to remind you, that all this splendour of truth and eloquence was unavailing before an abandoned tribunal, which had superseded all the rules of law and the sober restraints of justice, and which could listen unmoved to even these concluding words: “ My Lords, I have troubled “ your Lordships a great deal longer than I should “ have done. Were it not for the interest of these “ pledges, which a saint in heaven left me, I should be “ loath”—“ Here,” says the historian, “ he pointed “ to his children, and his weeping stopped him”— And if I were to attempt to proceed farther in this melancholy page, *my tears would stop me also.*

But let us look to what followed from these proceedings;—they were condemned and reversed, and stand recorded as a beacon to future generations. The act recites, “ That the turbulent party seeing “ no hopes to effect their unjust designs by ordinary “ way or method of proceedings, did at last resolve

“ to attempt the destruction and attainer of the
“ said Earl, by an Act of Parliament to be therefore
“ purposely made to condemn him *upon accumula-*
“ *treason. None of the pretended crimes being*
“ *treason apart, and so could not be in the whole,*
“ *if they had been proved, as they were not.*
“ Therefore it is enacted, that all records and pro-
“ ceedings relating to the said attainer be wholly
“ cancelled, and taken off the file, to the intent
“ that the same may not be visible in after-ages, or
“ brought into example, to the prejudice of any
“ person whatsoever.”

A similar fate attended the attainers of Lord Russell and Sidney, and will, sooner or later, attend every flagrantly unjust judgment, whilst England preserves her free constitution ; and, therefore, notwithstanding the ridiculous figure too frequently made by modern prophets, whose prophetic writings remain unfulfilled after the period of their fulfilment, I will hazard this public prediction—That long, long before one half of the audience which fills these benches, shall, by the course of nature, be called from the world, these very judgments in Scotland, which, more than any thing else, have produced the present trial, will be stigmatized, repealed, and with indignation reversed ; not by violence, or in irregular convention, but in the ordinary legal forms of a British Parliament.

The Attorney General will perhaps say, that the collateral facts are not established in order to be accumulated into guilt, as in the case of Lord Strafford ;—

that he disavows (which I admit, to his honour, he most distinctly did) all accumulations and constructive treasons, but that he establishes them to manifest the intention which led to the transaction charged upon the record.—Be it so, provided they *do* lead distinctly to that manifestation. But let us shortly examine them ; and then, if the rules of the Court would permit me, I would not only ask of you twelve men, but of every man, ay, and of every woman within the reach of my voice, whether they would kill a fly upon them ; yet you are asked to devote to destruction upon them the honourable gentleman who now stands before you.

The collateral facts, as my memory serves me to recollect them, and from whence the traitorous intention is to be inferred, are, that Mr. Tooke contributed to the circulation of the works of Thomas Paine, containing gross matter against the monarchy of the country ;—that he consented to send a congratulatory address to the Convention of France ;—that he was privy to the approbation of Mr. Joel Barlow, who had delivered this congratulation at Paris ; and lastly, that he had himself written a letter to the President of the Convention, offering to subscribe 4000 livres towards carrying on the war then existing between the states of Europe and France, even though part of it, in the event, should happen to be applied when this country should be involved in the same contest.

Gentlemen, though I feel myself very much ex-

hausted, I have strength enough left just to touch upon these matters in their order.

With regard to the first, I am surprised that the history of Mr. Paine's writings, and the approbation they met with, as connected with the new constitution of France, are so very little understood; and it is necessary to understand it, to account for the assent and encouragement which many persons, attached to the free constitution of Great Britain, were *forced* to bestow upon many parts of a work, though written undoubtedly by an author who was an enemy to its principles.

Gentlemen, it happened that when France threw off the galling yoke of arbitrary monarchy, which had been attended with such infinite evils to herself, and which had produced so many calamities to Great Britain, a very general exultation pervaded this country; and surely it was a natural theme of exultation to the inhabitants of a country which had given light and freedom for ages to the world, to see so large a portion of the human race suddenly emancipated from a bondage not only ignominious to France but dangerous to this island. They recollect the desolating wars which her ambition had lighted up, and the expensive burdens which our resistance to them had entailed upon us; they felt also, in the terrible disasters of France, a just pride in the wisdom of our forefathers, and a wholesome lesson to the present age and posterity not to degenerate from their example. They saw France fall-

ing a victim to the continuation and multiplication of those abuses in government, which our wise progenitors had perpetually mitigated by temperate and salutary reformations ; and they saw, therefore, nothing to fear from the contagion of her disorders : her arbitrary state, her superstitious church, had undergone no alterations ; and for want of those repairs which the edifices of civil life equally require with material structures, they crumbled suddenly into dust ; whereas, by the fortunate coincidence of accident, as much as by the exertions of wisdom and virtue, *our* condition had been slowly and progressively ameliorated—our civil power had been tempered and moderated, and our religion purified and reformed ; the condition of civil life had changed and bettered under their influence, and the country had started up even amid revolution with superior security and illustration.

Gentlemen, these reflections were not merely the silent, but the avowed expressions of some of the first persons in England, on the first burst of the French revolution ; and, I verily believe, the same sensations diffused themselves widely throughout the kingdom ; but, very unfortunately for France, for England, for Europe, and for humanity, this sensation, the natural result of freedom and independence, was not universally felt ;—very unfortunately the powers of Europe would not yield to an independent nation the common right of judging for itself in its own concerns, nor in prudence leave to

it the good and evil of its own government.—All Europe combined against France, and levied war against her infant constitution.—The despots of the earth, with whom the King of Great Britain had no common interest, trembling for their own rotten institutions, and looking to the wrongs and sufferings of their subjects, drew the sword (as was natural for despotism to draw it) to dispute the right of a people to change their ancient institutions.—This very combination naturally assimilated with the patriotism of France the public spirit of England, since our own Revolution was supported upon no other foundation than the principle which was not only denied, but was by violence to be exterminated; and many persons, therefore, notoriously attached to the British Government, expressed their reprobation of this conspiracy against the freedom of the world. This honest and harmless enthusiasm, however, met with a very sudden, and, in its consequences, an unfortunate check. A gentleman, of the first talents for writing in the world, composed a book, I am bound to believe with an honourable mind, but a book which produced a more universal and more mischievous effect, than any which perhaps our own or any other times have produced. When Mr. Burke's book upon the French Revolution was first published, at which period our Government had taken no active part against it, no man assimilated the changes of France to the condition of our country—no man talked of,

or figured in his imagination, a revolution in England, which had already had her Revolution, and had obtained the freedom which France was then struggling to obtain.—Did it follow, because men rejoiced that France had asserted her liberty, that they thought liberty could exist in no other form than that which France had chosen?—Did it follow, because men, living under the government of this free country, condemned and reprobated the dangerous precedent of suffering the liberty of any nation to be overborne by foreign force—did it follow from thence that they were resolved to change for the accidental and untried condition of France the ancient and tried constitution of our own country?—I feel within myself that I can rejoice, as I do rejoice, in the liberty of France, without meaning to surrender my own, which, though protected by other forms, and growing out of far more fortunate conjunctures, stands upon the same basis, of the right of a people to change their government and be free. Can any man in England deny this?—Yes, Gentlemen, Mr. Burke has denied it; and that denial was the origin of Mr. Paine's book.—Mr. Burke denied, POSITIVELY AND IN TERMS—that France had any right to change her own government, and even took up the cudgels for all the despots of Europe, who, at the very time, were levying a barbarous, scandalous, and oppressive war, to maintain the same proposition by the sword.

This work brought forward again, after a long

silence, Mr. THOMAS PAINE, who was indeed a republican beyond all question, but who had become so in consequence of the same corrupt and scandalous attempt to beat down by force the liberties of a nation ;—he became a republican in consequence of the similar and lamentable contest between Great Britain and America ; and it is rather a curious circumstance, that THIS VERY MR. BURKE, who considers Mr. Paine as a man not to be reasoned with, but only to be answered by criminal justice, and who condemns as a traitor every man who attempts to name him,—HIMSELF expressed his approbation of the very same doctrines published by Mr. Paine, when Mr. Burke himself was pleading the cause of a nation determined to be free ; not the cause of a *foreign* nation which had always been *independent*, but the cause of colonial America, in open war and rebellion against the Crown and Parliament of Great Britain. Mr. Paine, during the same crisis, wrote his book called Common Sense, addressed to the Americans in arms against England, exciting them to throw off the yoke of the mother-country, and to declare their independence.—Gentlemen, from having defended Mr. Paine upon his trial for writing his later work, which Mr. Tooke is accused of having approved, I am, of course, intimately acquainted with its contents, and with those of his former writings ; and I take upon me to say, that every offensive topic against monarchy, and all the principles of the Rights of Man, now regarded with

such horror, are substantially, and in many instances almost verbatim, to be found in the former publication. When Mr. Paine wrote his Common Sense, Acts of Parliament had declared America to be in a state of rebellion, and England was exerting every nerve to subdue her; yet, at that moment, Mr. Burke, not in his place in Parliament, where his words are not to be questioned, but in a pamphlet publicly circulated, speaks of this book, Common Sense, by name, notices the powerful effect it had upon the mind of America, in bringing them up to emancipation, and acknowledges, that if the facts assumed by the author were true, his reasonings were unanswerable. In the same pamphlet, several parts of which I stated to the former Jury, he declared, that he felt every victory obtained by the King's arms against America as a blow upon his heart;—he disclaimed all triumph in the slaughter and captivity of names which had been familiar to him from his infancy; and, with all the splendour of his eloquence, expressed his horror that they had fallen under the hands of strangers, whose barbarous appellations he scarcely knew how to pronounce. Gentlemen, I am not censuring Mr. Burke for these things; so far from it, that they sanctify his character with me, and ever prevent me from approaching him but with respect. But let us, at least, have equal justice. While these writings continue the object of admiration, and their author is held forth as the champion of our constitution, let not

Mr. Tooke stand a prisoner at the bar of the Old Bailey for having, in time of profound peace with France, and when every speech from the British Throne breathed nothing but its continuance, expressed only the same detestation of the exertions of foreign despotism against freedom, which the other did not scruple, in a similar cause, and in the time of open war, to extend to the exertions of his country.

To expose further the extreme absurdity of this accusation, if it be possible further to expose it, let me suppose that we were again at peace with France, while the other nations who are now our allies should continue to prosecute the war:—would it *then* be criminal to congratulate France upon her successes against them? When that time arrives, might I not honestly wish the triumph of the French arms? and might I not lawfully express that wish? I know, certainly that I might, and I know, also, that I would.—I observe that this sentiment seems a bold one; but who is prepared to tell me that I shall not? I WILL assert the freedom of an Englishman; I WILL maintain the dignity of man; I WILL vindicate and glory in the principles which raised this country to her pre-eminence among the nations of the earth; and as she shone the bright star of the morning, to shed the light of liberty upon nations which now enjoy it, so may she continue in *her radiant sphere*, to revive the ancient privileges of the world, which have been lost, and still to bring them

forward to tongues and people who have never yet known them in the mysterious progression of things !

It was the denial of these rights of men, which Englishmen had been the first to assert, that provoked Mr. Paine to write his book upon the French revolution, but which was written when we were not only at peace with France, but when she was holding out the arms of friendship to embrace us. We have subpœnaed the officer of the House of Lords to attend with the correspondence between Lord Grenville and Mr. Chauvelin, long, long after that period, in which you will find an absolute denial of enmity, and professions of peace and friendship, the sincerity of which declarations had been uniformly experienced by our countrymen in France, who had been received with affection, cordiality, and respect. I admit that the work of Paine contained at the same time strong and coarse reflections against the system of the British Government ; but Mr. Tooke not only disapproved of those parts of the book, but expressed his disapprobation of them to the author ; he repeatedly argued with him the merits of our government, and told him plainly that he had disfigured his work by the passages which applied to England, and which were afterwards selected for prosecution. Is it fair to pronounce, then, against the whole tenour of life and conversation, that Mr. Tooke approved of the destruction of monarchy, because he promoted the circulation of a

book, nine tenths of which was wholly collateral to the subject, and which contained important and valuable truths, consistent with, and even tending to its preservation? Only twelve pages of Mr. Paine's book were ever selected as inimical to the constitution, whilst above two hundred contain reflections which, if properly attended to, might secure it from the very attack he makes upon it in the rest.

Let us try Mr. Burke's work by the same test.—Though I have no doubt it was written with an honest intention, yet it contains, in my mind, a dangerous principle, destructive of British liberty.—What then? Ought I to seek its suppression? Ought I to pronounce him to be criminal who promotes its circulation? So far from it, that I shall take care to put it into the hands of those whose principles are left to my formation.—I shall take care that they have the advantage of doing, in the regular progression of youthful study, what I have done even in the short intervals of laborious life;—that they shall transcribe with their own hands from all the works of this most extraordinary person, and from the last, among the rest, the soundest truths of religion,—the justest principles of morals, inculcated and rendered delightful by the most sublime eloquence,—the highest reach of philosophy brought down to the level of common minds, by the most captivating taste,—the most enlightened observations on history, and the most copious col-

lection of useful maxims, from the experience of common life. All this they shall do, and separate *for themselves* the good from the evil, taking the one as far more than a counterpoise to the other.

Gentlemen, Mr. Tooke had an additional and a generous motive for appearing to be the supporter of Mr. Paine—the Constitution was wounded through his sides—I blush, as a Briton, to recollect, that a conspiracy was formed among the highest orders, to deprive this man of a British trial.—This is the clue to Mr. Tooke's conduct, and to which, if there should be no other witness, I will step forward to be examined—I assert that there was a conspiracy to shut out Mr. Paine from the privilege of being defended: he was to be deprived of Counsel; and I, who now speak to you, was threatened with the loss of office, if I appeared as his advocate—I was told, in plain terms, that I must not defend Mr. Paine—I did defend him, and I did lose my office *.

It was upon this occasion that Mr. Tooke interfered—Mr. Paine was not in circumstances to support the expense of his trial, and Mr. Tooke became a subscriber to his defence, though he differed from him, as I have told you, in the application of his principles to the British Government, and had

* When Paine was brought to trial, Lord Erskine (then Mr. Erskine) was Attorney General to the Prince of Wales, and was removed; but His Royal Highness afterwards appointed him his Chancellor, which office he held till he received the Great Seal from the King.

both publicly and privately expressed that difference. That Mr. Tooke's approbation of Mr. Paine's work, and of the French revolution, were founded upon no disgust to our own constitution, was manifested in the most public manner, at the very same period. A meeting was held at the Crown and Anchor, not called by Mr. Tooke, but at which he was present, to celebrate the first anniversary of the French revolution, where a noble Lord (Earl Stanhope) was in the chair, and a motion was made, "That this meeting does most cordially rejoice in the establishment and confirmation of liberty in France, and that it beholds, with peculiar satisfaction, the sentiments of amity and good-will which appear to pervade the people of that country towards this, especially at a time when it is the manifest interest" (*as God knows it is*) "of both states, that nothing should interrupt the harmony between them, which is so essential to the freedom and happiness, not only of both nations, but of all mankind." Mr. Horne Tooke—and I do not think, after I have read this, that I shall be suffered to go on making any more remarks on this part of the subject, because it is a key of the whole—Mr. Horne Tooke begged that the Honourable Gentleman, who was the mover, would add to his motion, some qualifying clause, to guard against misunderstanding and misrepresentation;—that there was a very wide difference between England and France; that the state-vessel of France had been not only tempest-beaten, and shattered,

but absolutely bulged ; whereas, in England, we had a noble, stately, and sound vessel, sailing prosperously upon the bosom of the ocean ; that it was true, after so long a course, she might, upon examination, appear somewhat foul at the bottom, and require some necessary repairs, but that her main timbers were all sound.—He therefore regretted, that there should be an addition to the motion, but that, if that addition was not made, he should move it himself—accordingly, he did move in public, “ that this “ meeting feel equal satisfaction, that the people of “ England, by the virtuous exertions of their an-“ cestors, have not so hard a task to perform as the “ French are engaged in, but have only to maintain “ and improve the constitution which their ancestors “ have transmitted to them.”—When Mr. Tooke moved this amendment, he did it in THE FACE OF THE WHOLE COUNTRY, and published, of course, to all mankind, those opinions, which I will prove to have been uniformly his—if indeed it is necessary to prove them, when the Attorney General has been so liberally wasting his strength in proving them, for the last three days. Mr. Tooke, when he proposed this motion, was acting upon the ordinary principle of his life, which, for his own satisfaction, rather than for yours, I shall prove from year to year.—I will take him up in the year 1780, and bring him down to the very time when he comes to your bar, and show that he has ever been steadfast in favour of the

pure, uncorrupted constitution of Great Britain, *but a mortal enemy to its abuses.*

This disposition is so far from being dangerous to public tranquillity, that it is its surest and its best support. Would you prevent the infection of French government from reaching this country, give to the people the practical blessings of their own. It is impossible to subdue the human mind by making war against opinions ; it may succeed for a season; but the end thereof is death : Milton has truly said, that a forbidden book is a spark of truth that flies up in the face of him who seeks to tread it out ; and that a government which seeks its safety in the suppression of the press by sanguinary penalties, is like the gentleman who heightened the wall of his park to keep out the crows—the human mind cannot be imprisoned ; it is impassive and immortal :—reform, therefore, the abuses which obscure the constitution, and I will answer for its safety. Above all other things, let men feel and enjoy the impartial protection of mild and equal laws. Thanks be to God, we have lately felt and enjoyed them in this place, and our constitution stands the firmer from the event ; whilst in other countries, at the same moment, the dominion of persecution and terror has made revolution follow upon revolution, and filled the earth with blood and desolation.

Gentlemen, I will now lay before you Mr. Tooke's political sentiments when they could not possibly be written to serve a purpose ; and I hope his Lordship

will permit Mr. Gibbs to read them, as my voice and strength begin to fail me.

Lord Chief Justice Eyre. What is it?

Mr. Erskine. A piece of evidence I have to offer. I am too much exhausted to read it.

Lord Chief Justice Eyre. If you wish to refresh yourself, sit down; we will wait patiently; but we should know what it is.

Mr. Erskine. I have nearly finished. It is a letter written to Lord Ashburton, who formerly, your Lordship knows, was the celebrated Mr. Dunning, who was engaged in a reform of Parliament; and Mr. Horne Tooke wrote this letter to him upon the subject of parliamentary reform, in the year 1782.

[*Mr. Gibbs here read the following Extract.*]

“ By the vote of the House of Commons on
 “ Tuesday last, Parliament, it seems, do not yet
 “ think it necessary to take into consideration the
 “ state of representation in this country. How-
 “ ever, my Lord, notwithstanding that vote, I am
 “ still sanguine enough to believe, that we are at
 “ the eve of a peaceful revolution, more important
 “ than any which has happened since the settlement
 “ of our Saxon ancestors in this country; and which
 “ will convey down to endless posterity all the bless-
 “ ings of which political society is capable.

“ My Lord, my expectations are greatly raised,
 “ instead of being depressed, by the objection
 “ which were urged against Mr. Pitt’s motion.

“ One gentleman says, ‘ *He cannot see any good purpose the motion would answer: for it would not assist Government with a ship, a man, or a guinea, towards carrying on the war with vigour, or towards establishing that much-wished-for object, peace.*’

“ My Lord, I hope the measure will be made to produce to Government both *ships*, and *men*, and *guineas*. For they would be very poor politicians, indeed, who could not in one measure comprehend many purposes: and still poorer, who should miss the present opportunity of obtaining, by this one measure of reform, every desirable object of the state.

“ Another gentleman apprehends that ‘ *nothing less than giving every man in the kingdom a vote would give universal satisfaction.*’

“ My Lord, I trust that there are very few persons in the kingdom who desire so improper and impracticable a measure. But, if there were many, the wisdom of Parliament would correct their plan, and the corrected would be well pleased at the correction.

“ My Lord, I shall not waste a word to show the necessity of a reform in the representation of this country. I shall only consider the mode of reform; and endeavour to show that it is not difficult to embrace every interest in the state, and to satisfy well-meaning men of every description. To this end I am compelled first to remove the

“ prejudices, and, indeed, *just objections*, which
“ some persons entertain to all the modes of reform
“ which have hitherto been recommended.

“ My virtuous and inestimable friend, Major
“ Cartwright, is a zealous and an able advocate for
“ *equal* and *universal* representation; that is, for an
“ *equal* and *universal* share of every man in the go-
“ vernment. My Lord, I conceive his argument
“ to be this: Every man has an equal right to free-
“ dom and security. No man can be free who has
“ not a voice in the framing of those laws by which
“ he is to be governed. He who is not represented
“ has not this voice; therefore, every man has an
“ equal right to representation, or to a share in the
“ government. His final conclusion is, that every
“ man has a right to an equal share in representa-
“ tion.

“ Now, my Lord, I conceive the error to lie
“ *chiefly* in the conclusion. For there is a very great
“ difference between having *an equal right to a*
“ *share, and a right to an equal share*. An estate
“ may be devised by will amongst many persons in
“ different proportions; to one five pounds, to
“ another five hundred, &c. : each person will have
“ an equal right to his share, but not a right to an
“ equal share.

“ This principle is farther attempted to be en-
“ forced by an assertion, that ‘ the all of one man
“ is as dear to him as the all of another man is to
“ that other.’ But, my Lord, this maxim will not

“ hold by any means ; for a small all is not, for
“ very good reasons, so dear as a great all. A
“ small all may be lost, and easily regained ; it may
“ very often, and with great wisdom, be risked
“ for the chance of a greater ; it may be so small as
“ to be little or not at all worth defending or caring
“ for. *Ibit eo qui zonam perdidit. But a large*
“ *all can never be recovered ; it has been amassing*
“ *and accumulating, perhaps, from father to son*
“ *for many generations ; or it has been the product*
“ *of a long life of industry and talents ; or the con-*
“ *sequence of some circumstance which will never*
“ *return.* But I am sure I need not dwell upon
“ this, without placing the extremes of fortune in
“ array against each other ; every man whose all has
“ varied at different periods of his life, can speak
“ for himself, and say whether the dearness in
“ which he held these different alls, was equal.
“ The lowest order of men consume their all daily,
“ as fast as they acquire it.

“ My Lord, justice and policy require that be-
“ nefit and burden, that the share of power and
“ the share of contribution to that power, should
“ be as nearly proportioned as possible. If aristoc-
“ cracy will have all power, they are tyrants and un-
“ just to the people, because aristocracy alone does
“ not bear the whole burden. If the smallest indi-
“ vidual of the people contends to be equal in power
“ to the greatest individual, he too is in his turn

“unjust in his demands; for his burden and contribution are not equal.

“Hitherto, my Lord, I have only argued against the *equality*; I shall now venture to speak against the *universality* of representation, or of a share in the government; for the terms amount to the same.

“Freedom and security ought surely to be equal and universal. But, my Lord, I am not at all backward to contend that some of the members of a society may be *free* and *secure*, without having a share in the Government. The happiness, and freedom, and security of the whole, may even be advanced by the exclusion of some, not from freedom and security, but from a share in the Government.”

Mr. Erskine. These are Mr. Tooke's sentiments, and they speak for themselves, without any commentary. It is very fortunate for me, therefore, as well as for the unfortunate gentleman whom I represent, that the subject of his defence is almost exhausted, because I myself am entirely so; and surely that circumstance must present in the strongest colours to men of your justice and discernment, the fatal precedent of such a trial; since, if I were even capable of grasping in my mind more matter than the greatest reach of human thought and memory could comprehend, the bodily strength of the strongest man would sink under the delivery.

I have been placed here, as you know, in a most arduous and anxious situation for many days during the late trial;—I have had no opportunity of rest in the interval, but have been called incessantly to the other labours of my profession, and am now brought back again to the stake without the refreshment which nature requires, for it must be a dishonest mind which could feel the tranquillity necessary for its reception; I came into Court this morning perfectly subdued with fatigue and agitation, and although I know the disposition of my honourable and learned friends to have left me at home, till the season arrived for the defence of the Prisoner; yet amid the chaos of matter which the fulfilment of their duty obliged them to lay before you, it was impossible for them to know, within even hours, the time I should be wanted. I hope, however, that amidst all these pressures I have been able to lay before you sufficient information for the discharge of your duty to the Prisoner and to the public.—The matter for your consideration being a mere matter of fact—*Has the Prisoner at the Bar conspired, with others, to depose the King, and to subvert by force the Government of the kingdom?*

The sentiments of Mr. Tooke upon the subject of our excellent Government, which my Learned Friend, Mr. Gibbs, has just read to you, would in themselves be sufficient to expose the falsehood of the charge. The publication cannot be considered as a pretext, because they have ever been uniformly supported by his conduct.—One of the most ho-

nourable men in this country now present, will prove to you that he acted upon these principles at the time he published them, and offered all his influence and exertions to promote Mr. Pitt's plan, which was then in agitation ; and I will lead him on in your view, day by day, from that period till within a fortnight of his apprehension for this supposed treason. Mr. Francis, a most honourable member of the House of Commons, and one of the Society called the Friends of the People, having suggested a plan for the reform of Parliament, which appeared to him to be moderate and reasonable, applied to Mr. Tooke, who was then supposed to be plotting the destruction of his country, to give him his assistance upon it. Mr. Tooke's answer was this—“ One fifth, or one tenth, nay one twentieth part of what you are asking will be a solid benefit, and I will give it my support.” Mr. Francis will tell you this upon his oath, and he will add what he has told me repeatedly in private, that he grew in his esteem from the candid and explicit manner in which he made this declaration. Mr. Sharpe has also proved, that at the very time when all this scene of guilt is imputed, Mr. Tooke was uniformly maintaining the same sentiments in the most unreserved confidence of private friendship. I could go on indeed, calling witness after witness throughout the wide-extended circle of all who have ever known him, that a firm and zealous attachment to the British Government, *in its uncorrupted state*, has

been the uniform and zealous tenour of his opinions and conduct ; yet in the teeth of this evidence of a whole life, you are called upon, on your oaths, to shed his blood, by the verdict you are to give in this place.

Gentlemen, I cannot conclude without observing that the conduct of this abused and unfortunate gentleman, throughout the whole of the trial, has certainly entitled him to admiration and respect ; I had undoubtedly prepared myself to conduct his cause in a manner totally different from that which I have pursued ; it was my purpose to have selected those parts of the evidence only by which he was affected, and, by a minute attention to the particular entries, to have separated him from the rest. By such a course I could have steered his vessel safely out of the storm, and brought her, without damage, into a harbour of safety, while the other unfortunate Prisoners were left to ride out this awful tempest. But he insisted on holding out a rope to save the innocent from danger—he would not suffer his defence to be put upon the footing which discretion would have suggested. On the contrary, though not implicated himself in the alleged conspiracy, he has charged me to waste and destroy my strength to prove that no such guilt can be brought home to others. I rejoice in having been made the humble instrument of so much good—my heart was never so much in a cause.

You may see that I am tearing myself to pieces

by exertions beyond my powers—I have neither voice nor strength to proceed further—I do not, indeed, desire to conciliate your favour, nor to captivate your judgments by elocution in the close of my discourse;—but I conclude this cause, as I concluded the former, by imploring that you may be enlightened by that Power which can alone unerringly direct the human mind in the pursuit of Truth and Justice.





THE PROCEEDINGS
 AGAINST
 SACKVILLE, EARL OF THANET,
 AND OTHERS,

FOR

A Misdemeanor;

*Tried at the Bar of the Court of King's Bench,
 April 25, 1799.*

THE following Proceedings against the Earl of Thanet and others, as taken in short-hand by Mr. William Ramsay, an eminent short-hand writer, and published after the Trial by Robert Fergusson, Esq. one of the Defendants, requires no Preface. Lord Erskine's Speech for that Nobleman, and for Mr. Fergusson and Mr. O'Brien, would have lost all its force and interest if any part of the Trial had been abridged, because it is entirely a Speech upon *viva voce* evidence, and upon a subject, too, which was a constant appeal to a variety of facts and minute circumstances related by a great number of witnesses; a species of forensic eloquence, as was most justly observed in the brilliant and interesting criticism of the former volumes in the Edinburgh

Review, of which we have no examples in the ancient world ; but of which every day, or, rather, every hour, in the British Courts of Justice might furnish instances worthy of preservation and admiration.

To relieve the reader from attending to the precise form of the Indictment, which is prefixed to the Proceedings, we cannot better or more correctly state the substance of it than in Lord Erskine's own words, in the prefatory part of his Address to the Jury.

“ In advertising to what the charge is, I need not
“ have recourse to the abstract I have made of this
“ Information.—The substance and common sense of
“ it is this:—that Mr. Arthur O'Connor had been
“ brought by legal process into the custody of the
“ sheriff of Kent; that a special commission had
“ assembled at Maidstone to try him and others for
“ high treason; that upon the opening of the com-
“ mission he had been again committed by the Court
“ to the same custody; that he was afterwards again
“ brought up to the bar, and found not guilty; and
“ that after he was so acquitted, but before he was
“ in strict form discharged by the order of the
“ Court, the Defendants conspired together to rescue
“ him. This is the essence of the charge. The dis-
“ turbance of the Court, and the assaults stated in
“ the different counts of the Information, are only
“ the overt acts charged to have been done in pur-
“ suance of the purpose to rescue the Prisoner.”

This Trial was at the time a great subject of political animosity ; but, faithful to the plan of this

work, we refrain from all observations. We present the proceedings to the Public, leaving the result to every man's own opinion, assisted, as we have already said, in our original preface, by the public voice and judgment.

PROCEEDINGS,

&c.

THE Information was opened by Mr. Abbott, and is as follows :

Kent, to wit. Be it remembered, that Sir John Scott, Knight, Attorney General of our present Sovereign Lord the King, who for our said Lord the King in this behalf prosecuteth, in his proper person cometh here into the Court of our said Lord the King, before the King himself at Westminster, on Wednesday next after three weeks of the Holy Trinity in this same term ; and for our said Lord the King giveth the Court here to understand and be informed, that heretofore, to wit, on Monday, the twenty-first day of May, in the thirty-eighth year of the reign of our Sovereign Lord George the Third, now King of Great Britain, and so forth, a special session of oyer and terminer and gaol delivery was holden by adjournment in and for the county of Kent, at Maidstone, in the said county, before Sir Francis Buller, Baronet, one of the Justices of our said Lord the King of his Court of Common Pleas, John Heath, Esquire, one other of the Justices of our said Lord the King of his Court of Common Pleas,

Sir Soulden Lawrence, Knight, one of the Justices of our said Lord the King assigned to hold pleas before the King himself, Samuel Shepherd, Esquire, one of the Serjeants of our said Lord the King learned in the law, and others their fellows, Justices and Commissioners of our said Lord the King, assigned, by letters patent of our said Lord the King under the great seal of Great Britain, to inquire, by the oath of good and lawful men of the said county of Kent, of all high treasons, and misprisions of high treason, other than such as relate to the coin of our said Lord the King, within the county aforesaid done, committed, or perpetrated; and the said treasons, and misprisions of treason, according to the laws and customs of England, for that time to hear and determine; and also assigned and constituted, by the letters patent of our said Lord the King, under the great seal of Great Britain, to deliver the gaol of our said Lord the King of the said county of Kent of the prisoners therein being and detained on the nineteenth day of March, in the thirty-eighth year aforesaid, or who should be therein detained before the tenth day of April in the same year, for or on account of any high treasons, or misprisions of high treason, other than such as relate to the coin of our said Lord the King. At which said session so then and there holden as aforesaid before the Justices and Commissioners above named, and others their fellows aforesaid, came Arthur O'Connor, Esquire, in the custody of John

Plumptre, Esquire, Sheriff of the said county of Kent, and which said Arthur O'Connor was, and had been, detained in the gaol of our said Lord the King of the said county of Kent before the tenth day of April in the year aforesaid, to wit, on the seventh day of April in the same year, for and on account of high treason, to wit, at Maidstone aforesaid: and the said Arthur O'Connor being then and there, to wit, at the said session so holden as aforesaid, brought to the bar in his own proper person, was then and there committed by the Justices and Commissioners above named, and others their fellows aforesaid, to the custody of the same Sheriff; and so being in the custody of the said Sheriff, was then and there, at the same session so holden as aforesaid, tried by the jurors of a certain Jury of the county of Kent in that behalf duly impannelled and returned, and chosen, tried, and sworn, for and upon certain high treasons not relating to the coin of our said Lord the King, specified and charged upon him in and by a certain indictment heretofore, to wit, at a previous holding of the same session before the said Sir Francis Buller and John Heath, and others their fellows, Justices and Commissioners assigned as aforesaid, duly found, returned, and presented against him by the jurors of a certain other Jury of the said county of Kent duly sworn and charged to inquire for our said Lord the King for the body of the same county, and to which said indictment he had theretofore pleaded that he was not

guilty of the premises therein specified and charged upon him: and the said Arthur O'Connor then being in the custody of the said Sheriff as aforesaid, was then and there, at the same session, by the jurors by whom he was so tried as aforesaid, found not guilty of the premises in and by the said indictment specified and charged upon him, as by the record and proceedings thereof more fully appears.— And the said Attorney General for our said Lord the King further giveth the Court here to understand and be informed, that the Right Honourable Sackville, Earl of Thanet, late of Maidstone, in the county of Kent; Robert Fergusson, late of the same place, Barrister at Law; Thomas Gunter Browne, late of the same place, Esquire; Dennis O'Brien, late of the same place, Esquire; and Thomas Thompson, late of the same place, Esquire; well knowing the premises aforesaid, but unlawfully and maliciously devising and intending to impede the course of public justice, and to break the peace of our said Lord the King, and to interrupt and disturb the Justices and Commissioners of our said Lord the King above named, and others their fellows aforesaid, in the execution of their said office, and to prevent and hinder the due and peaceable holding of the same session, did, together with divers other riotous and ill-disposed persons, whose names are to the said Attorney General as yet unknown, in open Court, at the same session so then and there holden, and at which the said trial was so had as aforesaid,

to wit, at Maidstone aforesaid, in the presence of the Justices and Commissioners of our said Lord the King above named, and others their fellows aforesaid, and before any order or direction had been made or given by the same Justices and Commissioners above named; and others their fellows aforesaid, or any or either of them, for the discharge of the said Arthur O'Connor from the custody of the said Sheriff, and before the said Arthur O'Connor was discharged from the custody of the said Sheriff, to wit, on the twenty-first day of May, in the thirty-eighth year aforesaid, at Maidstone aforesaid, in the county of Kent, with force and arms make and cause to be made a very great riot, rout, tumult, and disturbance, and with force and arms riotously, routously, and tumultuously attempt and endeavour to rescue the said Arthur O'Connor from and out of the custody of the said Sheriff, so that he the said Arthur O'Connor might go at large whithersoever he would, and also aid and assist the said Arthur O'Connor in an attempt by him then and there made to rescue himself, and escape and go at large from and out of the custody of the said Sheriff; and the better to effect such rescue and escape, did then and there, at the same session so holden, and at which the said trial was so had as aforesaid, to wit, on the twenty-first day of May, in the thirty-eighth year aforesaid, at Maidstone aforesaid, in the open Court aforesaid, and in the presence aforesaid, with force and arms, and with sticks, staves, and fists, unlaw-

fully, riotously, routously, and tumultuously make an assault in and upon one John Rivett, one Edward Fugion, and one Thomas Adams, in the peace of God and of our said Lord the King then and there being, and them the said John Rivett, Edward Fugion, and Thomas Adams, did then and there beat, bruise, wound, and ill-treat, and thereby then and there, with force and arms, did unlawfully, riotously, routously, and tumultuously impede and obstruct the Justices and Commissioners of our Lord the King above named, and others their fellows aforesaid, in the due and lawful holding of the same session, and the execution of their office, for a long space of time, to wit, the space of one hour, to the damage of the said John Rivett, Edward Fugion, and Thomas Adams; to the great contempt, disturbance, and interruption of the Justices and Commissioners above named, and others their fellows aforesaid, to the great terror of all the liege and peaceable subjects of our said Lord the King there being, in contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

And the said Attorney General of our said Lord the King, for our said Lord the King, further giveth the Court here to understand and be informed, that the said Sackville, Earl of Thanet, Robert Ferguson, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompson, well knowing all the premises

aforesaid, but unlawfully and maliciously devising and intending to impede the course of public justice, and to rescue and cause to be rescued the said Arthur O'Connor, so being in the custody of the said Sheriff as aforesaid, from the custody of the said Sheriff, so that he the said Arthur O'Connor might go at large whithersoever he would, did afterwards, to wit, at the same session so then and there holden, and at which the said trial was so had as aforesaid, and before any order or direction had been made or given by the Justices and Commissioners of our said Lord the King above named, and others their fellows aforesaid, or any or either of them, for the discharge of the said Arthur O'Connor from the custody of the said Sheriff, and also before the said Arthur O'Connor was discharged from the custody of the said Sheriff, to wit, on the twenty-first day of May, in the thirty-eighth year aforesaid, at Maidstone, in the county of Kent, with force and arms, aid and assist the said Arthur O'Connor in a certain other attempt by him then and there made to rescue himself, and escape and go at large from and out of the custody of the said Sheriff; and the better to effect such rescue and escape as last aforesaid, did then and there, with force and arms, and with sticks, staves, and fists, unlawfully make a certain other assault in and upon the said Thomas Adams, in the peace of God and of our said Lord the King then and there being, and in the aid of the said Sheriff then and there also being, and him the said Thomas

Adams did then and there again beat, bruise, wound, and ill-treat, to the great damage of the said Thomas Adams, to the great contempt, disturbance, and interruption of the Justices and Commissioners above-named, and others their fellows aforesaid, in contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

And the said Attorney General for our said Lord the King further giveth the Court here to understand and be informed, that at the said session so holden, and at which the said trial was so had as aforesaid, to wit, at Maidstone aforesaid, in the county aforesaid, the said Sackville, Earl of Thanet, Robert Fergusson, Thomas Gunter Browne, Dennis O'Brien; and Thomas Thompson, unlawfully and maliciously devising and intending to break the peace of our said Lord the King, and to interrupt and disturb the Justices and Commissioners of our said Lord the King above-named, and others their fellows aforesaid, in the execution of their office, and to prevent and hinder the due and peaceable holding of the said session, did, together with divers other ill-disposed persons, whose names are to the said Attorney General as yet unknown, at Maidstone aforesaid, in the open Court aforesaid, and in the presence of the Justices and Commissioners above-named, and others their fellows aforesaid, to wit, on the twenty-first day of May, in the thirty-

eighth year aforesaid, unlawfully, riotously, routously, and tumultuously assemble and gather themselves together to break the peace of our said Lord the King, and to interrupt, disturb, and obstruct the Justices and Commissioners above-named, and others their fellows aforesaid, in the execution of their office, and to prevent and hinder the due and peaceable holding of the said session; and being so assembled and gathered together, did then and there, with force and arms, at the said session so then and there holden, and at which the said trial was so had as aforesaid, in the open Court aforesaid, and in the presence aforesaid, with force and arms, unlawfully, riotously, routously, and tumultuously make and raise, and cause and procure to be made and raised another very great noise, tumult, riot, and disturbance, and thereby, for a long space of time, to wit, for the space of half an hour, interrupt, disturb, and obstruct the Justices and Commissioners above-named, and others their fellows aforesaid, in the lawful and peaceable holding of the said session, and in and upon the said John Rivett, Edward Fugion, and Thomas Adams, in the peace of God and of our said Lord the King then and there being, with force and arms, did then and there make another assault, and them the said John Rivett, Edward Fugion, and Thomas Adams, did again beat, bruise, wound, and greatly ill-treat, to the great damage of the said John Rivett, Edward Fugion, and Thomas Adams, to the great hindrance

of public justice, to the manifest disturbance and violation of the peace of our said Lord the King, to the great hindrance, obstruction, and contempt of the Justices and Commissioners above-named, and others their fellows aforesaid, to the great terror of all the liege and peaceable subjects of our said Lord the King there being, in contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

And the said Attorney General of our said Lord the King, for our said Lord the King, further giveth the Court here to understand and be informed, that at a certain other special session of oyer and terminer and gaol delivery, holden by adjournment in and for the county of Kent, at Maidstone in the said county, on Monday the twenty-first day of May, in the thirty-eighth year aforesaid, before Sir Francis Buller, Baronet, one of the Justices of our said Lord the King of his Court of Common Pleas, John Heath, Esquire, one other of the Justices of our said Lord the King of his Court of Common Pleas, Sir Soulden Lawrence, Knight, one of the Justices of our said Lord the King assigned to hold pleas before the King himself, Samuel Shepherd, Esquire, one of the Serjeants of our said Lord the King learned in the law, and others their fellows, Justices and Commissioners of our said Lord the King, by our said Lord the King duly assigned and constituted

to hold the same session, the said Sackville, Earl of Thanet, Robert Fergusson, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompson, unlawfully and maliciously devising and intending to break the peace of our said Lord the King, and to prevent and hinder the due and peaceable holding of the said last-mentioned session, did, together with divers other ill-disposed persons, whose names are to the said Attorney General as yet unknown, in open Court, at and during the continuance of the said last-mentioned session, and in the presence of the Justices and Commissioners last above-named, and others their fellows aforesaid, to wit, on the twenty-first day of May, in the thirty-eighth year aforesaid, at Maidstone aforesaid, in the said county of Kent, unlawfully, riotously, routously, and tumultuously assemble and gather themselves together to break the peace of our said Lord the King, and to prevent and hinder the due and peaceable holding of the said last-mentioned session ; and being so assembled and gathered together, did then and there, with force and arms, at the said last-mentioned session, in the open Court last aforesaid, and in the presence last aforesaid, unlawfully, riotously, routously, and tumultuously make and raise, and cause and procure to be made and raised, another very great noise, rout, tumult, riot, and disturbance, and thereby for a long space of time, to wit, the space of half an hour, interrupt, disturb, and obstruct the Justices and Commissioners

last above-named, and others their fellows last aforesaid, in the lawful and peaceable holding of the said last-mentioned session, to the great hindrance of public justice, to the contempt and interruption of the Justices and Commissioners last above-named, and others their fellows aforesaid, to the manifest disturbance and violation of the peace of our said Lord the King, to the great terror of all the liege and peaceable subjects of our said Lord the King there being, in contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

And the said Attorney General of our said Lord the King, for our said Lord the King, further giveth the Court here to understand and be informed, that the said Sackville, Earl of Thanet, Robert Fergusson, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompson, unlawfully and maliciously devising and intending to break the peace of our said Lord the King, did, together with divers other ill-disposed persons, whose names are to the said Attorney General as yet unknown, on the twenty-first day of May, in the thirty-eighth year aforesaid, at Maidstone aforesaid, in the county of Kent, unlawfully; riotously, routously, and tumultuously assemble and gather themselves together to break the peace of our said Lord the King; and being so assembled and gathered together, did then and there, with force and arms, unlawfully, riot-

ously, routously, and tumultuously make and raise, and cause and procure to be made and raised, another very great noise, rout, tumult, riot, and disturbance, to the manifest disturbance and violation of the peace of our said Lord the King, to the great terror of all the liege and peaceable subjects of our said Lord the King there inhabiting and being, in contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

Whereupon the said Attorney General of our said Lord the King, who for our said Lord the King in this behalf prosecuteth for our said Lord the King, prayeth the consideration of the Court here in the preinises, and that due process of law may be awarded against them, the said Sackville, Earl of Thanet, Robert Fergusson, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompson, in this behalf, to make them answer to our said Lord the King, touching and concerning the pre-
mises aforesaid.

Wherefore the Sheriff of the said county of Kent was commanded that he should not forbear, by reason of any liberty in his bailiwick, but that he should cause them to come to answer to our said Lord the King touching and concerning the pre-
mises aforesaid.

And now, that is to say, on Wednesday next after the octave of Saint Hilary in this same term,

before our said Lord the King at Westminster, come the said Sackville, Earl of Thanet, Robert Fergusson, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompson, by Benjamin Burnett, their Clerk in Court; and having heard the said Information read, they severally say that they are not guilty thereof, and hereupon they severally put themselves upon the country; and the said Sir John Scott, who for our said Lord the King in this behalf prosecuteth, doth the like: therefore, &c.

MR. ATTORNEY GENERAL.

MAY it please your Lordships and Gentlemen of the Jury—I can very unfeignedly assure you, that I should have felt infinite satisfaction, if, in any view that I could take of what my country required of me, I could have determined not to have instituted the present prosecution.

Gentlemen, many reasons would have influenced me to act upon that wish. The first and the most important is, that I am obliged, by this Information, to impute to a Nobleman who is one of the Defendants, and to the Gentlemen whose names occur upon this record as the other Defendants, an offence which appears to me to be one of the most heinous, the consideration of which has been of-

Gentlemen, in so viewing the subject, I hope I may be allowed, though I am the prosecutor of this Nobleman and these Gentlemen, to express my regret that I am to make such an imputation in a Court of Justice with respect to any of them: but, Gentlemen, when I consider that the pure administration of law in this country is the great security upon which all the public blessings known to the country rest; when I recollect that it is absolutely necessary for the free and uncontrolled administration of that justice, that those who have duties relative to any part of it should act under the impression that they are perfectly secure in the administration of the justice of the country, it is quite impossible for me to act upon any other principle but this, namely, that it must be known that the Attorney General of the country is bound, where there is a probable cause to impute to individuals that they have grossly violated that principle which requires that the administration of justice should be safe, to put upon them at least the necessity of satisfying a Jury of the country that they are innocent of that charge.

Gentlemen, I agree that the charge is not to be made upon light grounds; that circumstances ought to be laid before the Officer of the Crown, which may justify him in the exercise of a fair and honourable discretion to bring forward the accusation; and

I shall go along with my Learned Friends in admitting, that the circumstance of the accusation being made, by no means decides that it is justly made.—It is for you carefully and anxiously to examine the circumstances of the evidence, and then to decide whether the first appearances of guilt have been also attended with actual guilt.

Gentlemen, the Information states to you, that at a Special Session of Oyer and Terminer, held at Maidstone in the month of May last, Mr. O'Connor, together with several other persons, were tried for the crime of high treason, of which they had been accused by a Grand Jury of the county of Kent. The Information states, that the Jury had found four of the Defendants, Mr. O'Connor being one of the four, not guilty of the offence with which they were charged. The Information states, that before he was discharged, these Defendants (and you will give me leave to point out particularly to you the substance of the different charges in this Information) did, in open Court, and before any discharge, make a riot, and attempt to rescue him out of the custody of the Sheriff; that they assaulted three persons named in the first count of the Information, John Rivett, Edward Fugion, and Thomas Adams; that they riotously impeded and obstructed the Commissioners of His Majesty in the due and lawful holding of the Session. The second count charges them with having, before the discharge of Mr. O'Connor,

assisted him to rescue himself out of the custody of the Sheriff, and having assaulted Thomas Adams, who was acting in aid of the Sheriff. The third count charges them with having made a riot in open Court, and been guilty of the assault. The fourth count charges them with a riot in open Court, without the circumstance of the assault; and the last count charges them with a riot, without any addition of circumstances: and it will be for you to determine whether they are guilty of all, or any of the charges stated in this Information.

Gentlemen, I will endeavour now to open to you as much of this case as may enable you to understand as much of this evidence as is offered to you; not entering into the minutiae of the evidence, but endeavouring to assist you in the information you will presently receive from the witnesses, by stating so much of the case as may make it intelligible to you, without presuming to state more to you; because, perhaps, in all cases where justice is to be administered, more particularly in criminal cases, it would be my wish that the Jury should learn it from those who are to state it upon their oaths, rather than receive any impression from the person standing in the situation in which I have the honour to address you.

Gentlemen, the trial at Maidstone was, as I need not tell those to whom I have the honour to address myself, an extremely long one. The witnesses on both sides had been desired to withdraw from the

Court previous to the commencement of the trial. In the natural course of proceeding, the witnesses for the Defendants were called after the witnesses for the prosecution ; and the Noblemen and Gentlemen who gave evidence in favour of Mr. O'Connor and the other Defendants in that trial for high treason, after respectively giving their evidence, remained in Court. It may be necessary for me here to state to you so much of the construction of the Court as will enable you to understand what I am now representing to you ; you will have plans of the Court offered to you by and by, in order to make the evidence more intelligible. Give me leave to represent His Majesty's Commissioners to sit in the place where the Learned Judges now sit ; you will consider the Jury as sitting very nearly in the position, with respect to the Judges, as you now sit with relation to the Judges who now sit here. The Counsel for the prosecution sat, I think, in that part of the Court where that Gentleman is now sitting with a yellow waistcoat ; and above them was a place in which the several witnesses were examined.

The witnesses were therefore directly opposite the Jury, and the Prisoners at the Bar were removed somewhat behind the Counsel, who sat, as it were, in the place where I am now standing, there being some little distance between them and the Prisoners, who were in the bar behind.

Gentlemen, after the several witnesses had been examined for the Prisoners, most of them, I be-

lieve, remained in Court ; and I should not make the observation, if it did not appear to me material with reference to the present case. Indeed, I should not be justified in making the observation, if I did not find it to be material to the present case ; for the circumstance of the witnesses having been removed out of Court before the trial began was extremely favourable, I do not mean to say otherwise than justly so, to the Prisoners, because, after the case had been proved, such as it was, on the part of the prosecution, one feels it a little difficult to believe, that if that evidence had been heard by the witnesses for the Defendants, which had been given by the witnesses for the prosecution, the evidence that was given for the Defendants could have been given ; and this is material in this point of view, because, with respect to the Noble Lord who is one of the Defendants upon this record, and with respect to some other Defendants upon this record, although they had not heard the evidence in the course in which it was offered to the attention of the Jury, yet, before the circumstances happened which are charged in this Information as circumstances of criminal guilt, no one of the Defendants, as far as I know, I mean, could have been ignorant of the circumstances actually proved with respect to Mr. O'Connor, as that evidence applied to his relation to England, or his relation to Ireland ; and I will state presently the use I mean to make of that circumstance. Gentlemen, in the course of the afternoon which preceded the conclu-

sion of the trial, I have reason to believe that Lord Thanet, and the other persons upon this record, very studiously and anxiously placed themselves in that part of the Court in which they could act with effect with respect to the rescue of Mr. O'Connor.

Gentlemen, with respect to one of the Defendants, whom, as a gentleman in the profession to which I belong, I certainly prosecute with all the regret that can belong to that circumstance, but which, at the same time, must not supersede the obligations I owe to the public—that gentleman had been in Court during the whole of the trial: he had been Counsel for some or one of the Prisoners; and he was placed, in consequence of the duty he had to discharge, in a situation in which, if he chose so to exert himself, he certainly could be useful in this attempt to rescue Mr. O'Connor. With respect to the Noble Lord, I need not, I am sure, in this place, state to you, that he holds in this country the character of an hereditary member of the constitution; and with respect to the last gentleman whom I mentioned, Mr. Fergusson, I take leave to say, besides the general duty he owed to the public in a matter of this nature, there was another very high duty imposed upon him, which I hope and trust Gentlemen who sit behind me will never forget—that that gentleman, as a barrister, owed a duty to the Court—that it is their bounden duty, that it is a very sacred duty of theirs, instead of

interrupting the course of justice, to assist it in every fair, honourable, and effectual way.

Gentlemen, a verdict of Not Guilty was given in the case of Mr. O'Connor; and here I am very ready to admit this, that if I could have persuaded myself that the circumstances which then took place, namely, that Mr. O'Connor, in consequence of that verdict, misconceiving that he was discharged, and acting under that impulse, had intended merely to mix himself with the rest of the Court, and that those who had been charged with the care of his interests, or those who thought well of him, had acted upon the impulse of the feelings of that moment, which might certainly have been such as to have misled men who, upon better consideration, would not have so acted, it would have become me to have hesitated before I determined, consistently with an attention to the public safety and to the public interests, to have instituted this prosecution.

Now, Gentlemen, before I proceed to state to you the circumstances to which I beg your serious attention, I will state to you the motives with which I do it. When I state the circumstance of a warrant having been issued to apprehend Mr. O'Connor, conceiving, as I do, that some persons either knew, or believed, or conjectured, that there might be some other demand of justice upon O'Connor, and that therefore they were determined he should not remain in Court till he was regularly discharged,

for the purpose of preventing that other demand of justice being made upon him—I say the offence, even in that way, is of so aggravated a nature, that I have no wish to charge it higher upon the record.

Then, Gentlemen, I have to state this to you— When the verdict of Not Guilty was pronounced, Mr. O'Connor endeavoured (it will be for you to decide whether or not with the co-operation of the Defendants whose names occur upon this record) to get out from the place in which he stood as a Prisoner, with a view to get out of Court, and for the purpose of not being answerable to some demands of justice which he, and those who were acting with him, had reason to believe would be made upon him, if he staid till he was regularly discharged.

Gentlemen, one of the Defendants in this case, I mean Mr. Thompson, a member of Parliament, was bound, certainly, from his situation as a subject of this country, and bound from the high situation in which he stands in the country, not to be acting in the execution of such a purpose as this Information imports: but you will find that he, together with Mr. O'Brien, had taken great pains, in the course of the afternoon, to sift from certain persons who will be called to you as witnesses, one of whom, indeed, I cannot call, because the hand of God has removed him by death, but who would have spoken of important circumstances—I mean Fugion the officer; but I think you will find very

satisfactory evidence independent of that; and I should not have mentioned his name, but his name will be introduced in a very striking manner by the witnesses: you will find that Mr. O'Brien and Mr. Thompson were, in the course of the afternoon, extremely anxious to inquire, and to know with certainty, whether there was any demand of justice upon Mr. O'Connor, supposing him to be acquitted of the present charge.

Gentlemen, you will hear and you will attend to the evidence that will be given upon that part of the case; and when the conduct of Mr. Thompson is stated to you by the persons who will relate how he acted at the moment when Mr. O'Connor first attempted to escape out of this Court, you will then consider with yourselves, whether the case is not, by that evidence, most completely made out against Mr. Thompson.—I distinguish him in this part of the case, because, according to the evidence which I have now to offer to you, I have no testimony to give with respect to Mr. Thompson, as to his conduct in what I call the second riot which happened; and I think it right to say so, that the case may be disengaged in the first instance, and, in the second, that I may do him justice.

Gentlemen, you will hear what part Mr. Fergusson took in this: and here I cannot but observe, that it is quite impossible that I can do Mr. Fergusson the discredit to suppose, that he could believe, after the evidence he had heard, that it was so

unfit that justice should make any other demand upon Mr. O'Connor, that it was fit that he should forcibly resist the execution of that demand if it was made. I must give him credit for his professional knowledge; I must give him credit for the accurate knowledge which he must have had upon the occasion.

But, Gentlemen, it does not rest there; for the officer being charged to arrest Mr. O'Connor, the fact was made known to the Court; and the learned Judge who presided there, I mean Mr. Justice Buller, whose absence I cannot but lament, when I recollect that that absence is occasioned by extreme illness—Mr. Justice Buller expressly stated, that the Prisoners were not to be discharged; and expressly directed, that all the Prisoners, except that one upon whom sentence of death was to be passed, should be kept back for the present. This was, therefore, a distinct notice, that there was an act to be done upon the part of the Court.

Now, Gentlemen, be so good, without my entering into a detail of that evidence, to attend to the circumstances as to the conduct of the different Defendants, during the time the learned Judge was executing the painful duty of passing the sentence of death—giving your attention also to what was the conduct of the several Defendants, when this notice had been publicly given in Court, the moment that that sentence was finished; and unless I am deceived, indeed, with respect to the effect of that

evidence, you will have no difficulty in coming to this conclusion, that those Defendants did mean to take Mr. O'Connor out of the reach of the demands which it had been publicly declared justice had upon him.

Gentlemen, I do not know how the Defendants are to deliver themselves from this charge; because I will give any case to my Learned Friend that he chooses to ask of me; I will suppose that he was absolutely discharged; I will admit that, under a misconception that there was no other demand of justice upon him, they supposed he ought to be liberated immediately under the circumstances in which he stood, and that that was a mistake, a misapprehension; but, Gentlemen, what is to become of the justice of the country, if such an example is to be set, that a Peer of this realm, and a learned gentleman in my own profession, together with these other gentlemen named in this record, shall take the justice of the country into their own hands?—that you shall hear in a court of justice men saying to a prisoner, “ Spring !” Another, “ Put out the lights !”—In fact, the lights were put out, and a great deal of confusion ensued, which, if it had not been met with a great deal of spirit by the witnesses who will be called to you, no man could be answerable for what might have been the serious consequences attending it: and the duty imposed upon me is this—to take care of you—to take care of the learned Judges—to take care of all who have either

acted in the administration of justice, or who are present with those who are acting in the administration of justice; and I should have been deeply responsible if I had not instituted this prosecution, whatever may be your verdict upon the circumstances of the case, as a public lesson to all mankind that the Courts of Justice must be treated with respect.

Gentlemen, I presume we shall have evidence given, and it is very fit that it should be given, whether these acts were done intentionally, or under a misconception. It may admit of an explanation of that sort—with reference to which, I beg leave to call your attention to circumstances very material for that attention, when you are determining upon the character of the acts done by the Defendants, and the view with which they did those acts. It will be, for instance, for Mr. Fergusson to explain what could put into the hands of a professional man a stick, with which he attempted to strike at those who were executing their duty; it will be for him to explain what was the meaning of the expressions which he used: and with respect to the Noble Lord Thanet, I shall prove to you, that when advice was given to him that it would be better for him, in the high and great situation which he held, to recommend a peaceable demeanour, to endeavour that the quiet of the Court should be kept, that that Noble Lord expressed himself to this effect, “ It is but “ fair that he should have a run for it;” and when you couple that expression, as it will be proved by

respectable witnesses, with his acts as they will be proved by respectable witnesses, I think you can have no doubt what was the character of the acts, and what the intention of that Noble Lord.

Gentlemen, having thus stated the circumstances, I shall proceed to call the witnesses. I am perfectly sure that you will give that attention which is due to the public, and to the Defendants. It is not for the interests of justice, unquestionably, that any man should be convicted who ought not to be convicted ; you will hear, therefore, the evidence with as favourable an eye to the several Defendants as the nature and interests of justice will permit ; but, on the other hand, I am sure you will remember, that no station or rank in life ought to protect any man from the operation of law ; and in truth, in a moral view, the higher the situation of men who are guilty of offences of this nature, the higher the offence is, the more that offence calls for punishment.

EVIDENCE FOR THE CROWN.

JOHN STAFFORD *sworn.*

Mr. Law. My Lord, I only call this witness at present, for the purpose of producing a copy of the

record; I shall afterwards examine him more at large.

Q. You are clerk to Mr. Knapp, clerk of assize on the home circuit?

A. I am.

(*Produces a copy of the record of the conviction of O'Coigly, and of the acquittal of O'Connor and others.*)

Q. Have you examined it?

A. I have.

(*It was read by Mr. Barlow.*)

Mr. Garrow. We proposed to have troubled Mr. Justice Heath; but as he is not yet come down, we will now call Mr. Serjeant Shepherd.

Mr. Serjeant SHEPHERD sworn.—Examined by Mr. Garrow.

Q. We have collected from the record, that you were one of the Commissioners appointed to try certain persons at Maidstone.

A. I was.

Q. Did you attend upon the Bench upon that occasion?

A. I did.

Q. Do you remember the circumstance of the Jury, after they had retired, coming into Court to deliver their verdict?

A. I do.

Q. Are you acquainted with the person of my Lord Thanet?

A. I am. I had seen my Lord Thanet examined as a witness on that day for Mr. O'Connor; I did not know his person before.

Q. Are you acquainted with the person of Mr. Dennis O'Brien?

A. I am.

Q. Are you acquainted with the person of Mr. Gunter Browne?

A. I cannot say I am. I knew Mr. Gunter Browne a great many years ago; I had no recollection of its being Mr. Gunter Browne—but I saw a person upon the table, after the riot was over, who was said to be Mr. Gunter Browne.

Q. Are you acquainted with Mr. Fergusson, a gentleman at the Bar?

A. I am.

Q. Are you acquainted with Mr. Thompson?

A. I am acquainted with the person of Mr. Thompson; but I do not recollect seeing Mr. Thompson at Maidstone.

Q. Be so good as state to the Court, whether, after the Jury had given in their verdict, and judgment of death had been pronounced upon the Prisoner who was convicted, you made any observation upon any of these persons, or their conduct?

A. After the Jury had given their verdict, and indeed, I think, at the time the Jury gave their verdict, my Lord Thanet was standing before the Bar

at which the Prisoners stood, with his back to the Prisoners, and his face, of course, towards the Court. I am not quite sure whether my Lord Thanet was on the bench at which the Solicitors for the Prisoners stood, or whether there was any space between the bench and the Bar ; that I could not sufficiently observe.

Mr. Garrow. It may not be improper here to state (and we shall certainly prove it), that there was no such space—I believe every body knows that the bench to which the Learned Serjeant alludes, was made for the accommodation of the solicitors, and was as this may be, supposing this to be the Bar—(*describing it.*)

Mr. Serjeant Shepherd. My Lord Thanet stood with his face towards the Court, and his back to the Prisoners ; he was rather to the right hand of O'Connor ; I don't mean upon a line with O'Connor, of course, but rather to his right hand.

Q. May I interrupt you to ask, whether the right-hand side was the side upon which the Jailer was placed ?

A. I am not quite sure whether it was the side on which the Jailer was placed ; it was the side on which O'Coigly, the convicted prisoner, stood ; and it was the side on which the Bow Street Officers afterwards endeavoured to advance.

Mr. Erskine. The side nearest to the great street of Maidstone ?

Mr. Garrow. Certainly so, which is the side on which we all know the Jailor is placed.

Q. You recollect the Jailor has a box on that side next the great street?

A. I recollect he has, and, therefore, it was certainly on that side on which the Jailor was placed. Mr. O'Brien stood, or sat, at that time, I don't exactly recollect which—but Mr. O'Brien was on the same line with Lord Thanet, but rather to the left hand of Mr. O'Connor. Whether there was any person between my Lord Thanet and Mr. O'Brien, I do not recollect.

Q. When I interrupted you, you was about to state something of the Bow Street Officers advancing.

A. I think something had been said before the Jury brought in their verdict. When there was an expectation that they were coming, something had been said about the Bow Street Officers being there. There was a sort of noise or buzz in Court; and somebody said, I don't know who, that the Bow Street Officers were making a noise. In consequence of that it was that I observed one of the officers, I think Rivett—it was either Fugion or Rivett; I am not quite sure that I recollect the person of one from the other—

Q. You had seen them and heard them give evidence?

A. I had, and I rather think it was Rivett, who I observed standing at the corner of the Bar; and

they were desired to be quiet—not particularly the Bow Street Officers, but the Court desired that every body would be quiet ; and they were quiet ; and the Jury then brought in their verdict. When the Jury pronounced their verdict of Not Guilty upon Mr. O'Connor, some person, but whom I don't recollect, said, " Then they are discharged ;" other persons sitting round the table said, " No, they are not " discharged ;" and at that time Mr. O'Connor, I think, had raised his knee to the Bar, as if to get over ; whether he was pushed back, or pulled back, I don't know ; but he was restored to his former position behind the Bar. A question was put to the Court, by somebody—whether by the Prisoners, or the Counsel for the Prisoners, or by-standers, I cannot tell—but some one said, " Are they not dis- " charged, my Lord ?" or, " Have they not a right " to be discharged ?" or some such terms. Mr. Justice Buller, I think, said, " No, they are not to " be discharged yet ; put the other Prisoners back, " and let O'Coigly stand forward :" I don't pledge myself for the exact words, but certainly to that effect.

Q. I will trouble you to repeat that, according to the best of your recollection.

A. " Put the other Prisoners back, and let " O'Coigly (who was the convicted Prisoner) stand " forward." I should have told your Lordship, that when it was asked, " whether they were not to be " discharged," before the riot, if I may so speak,

began, one of the Bow Street Officers, I think, got up upon the bench, or form I should rather say, and said, "No, my Lord, I have a warrant against Mr. "O'Connor;" whether he added for treason, or for high treason, I do not recollect. It was immediately upon the officer's saying that, that Mr. Justice Buller said, "They are not discharged :" I don't mean in answer to that ; but he said as a direction of the Court, "They are not discharged ; put the "others back, and let O'Coigly stand forward."

Q. I would ask you, whether that form upon which the Officer raised himself to address the Court, was near the place where, as you before described, the Bow Street Officers were before the Bar, and near Lord Thanet ?

A. Certainly. He set his foot upon the end of the form before which Lord Thanet stood, with certainly, I think, the interval of three or four persons.

Q. Was that expression of the Officer's addressed audibly to the Court ?

A. Certainly. I heard it most distinctly, and, I think, every one must have heard it.

Q. Did he produce a paper ?

A. Yes ; he said, "No, my Lord, they are not "to be discharged. I have a warrant against Mr. "O'Connor;" and he certainly extended his hand with a paper in it.

Q. After that direction had been given by the Court which you have stated, what then passed ?

A. Mr. Justice Buller proceeded to pronounce sentence upon the Prisoner O'Coigly. During the first part of the time that he was pronouncing sentence, my attention was particularly attracted to O'Coigly the Prisoner—I was looking at him, and attending to him.

Q. The form of the sentence was introduced by a prefatory address?

A. Yes. During the former part of it, my attention was directed to him. Towards the conclusion of the sentence, I think just as Mr. Justice Buller came to that part of the sentence which pronounces the specific punishment, I observed Lord Thanet and Mr. O'Brien standing in the same position as they had stood before, and I observed Mr. O'Brien turn round, and look up at Mr. O'Connor—I wish my Lord here, only to state what I saw, and not what my conjecture or construction was upon it.

Q. I may take the liberty, however, of asking you, whether what you saw made an impression upon your mind? What that impression was, I shall not ask.

A. It did. He looked up at Mr. O'Connor, and then looked down to the place before him, which cannot be so well expressed in words as by an imitation of the manner; he looked down with a very slight motion, certainly an inclination of his head. Lord Thanet was standing with his back against the Bar, behind which Mr. O'Connor stood. I can describe it no other way than standing square as I.

do now. I did not see Lord Thanet make use of any motion or gesture, at that time, certainly. The moment the last word of the sentence had been pronounced by Mr. Justice Buller, the instant he had finished, Mr. O'Connor raised himself upon the Bar ; he jumped with his left foot upon the Bar ; he put his hand upon the shoulder of Mr. O'Brien, and, I think, his right upon Lord Thanet's shoulder, jumped over the Bar between Lord Thanet and Mr. O'Brien, passed Mr. O'Brien towards the door of the Court, which was on that side next the small street of Maidstone—

Q. That is, from the Bow Street Officers ?

A. Yes ; then I lost sight of Mr. O'Connor. Whilst Mr. O'Connor was getting over the Bar, which, though it takes some space to describe, was done almost in an instant, the Bow Street Officers were pressing, endeavouring to get towards him, for the purpose of stopping him, I suppose.

Q. That is, in the narrow pass between the back of the seat for the Counsel for the Prisoners, and the bench that was made for the accommodation of their Solicitors ?

A. Yes. Lord Thanet certainly stood in the position in which I had observed him. There was a great noise, of course, took place at that time, at the moment that Mr. O'Connor was getting over the Bar ; and some people calling to stop him, there was a great noise certainly. Lord Thanet stood, in the way that I have described to Your Lordship, in

the pass ; the officers were endeavouring to press by him ; and he stood till, I think, in a very short space of time, he held up his stick with both his hands over his head. There was then a great deal of confusion ; persons got upon the table ; and there was a press, in the narrow pass, of officers and persons from that side of the Court, attempting to press towards the door to which O'Connor had rushed ; and other persons, whom I cannot say, appearing to me to push the other way, as if to prevent them from passing. I saw sticks raised, and fists raised, by individuals ; but who did so, I cannot speak to. There became then a general confusion in that part of the Court, so that I lost sight of particular individuals ; the candles were some of them thrown down ; they were upon the table ; and there was a general riot and confusion, certainly, in that part of the Court, and in most other parts of the Court ; at that time a great number of persons had got upon the table, and there was certainly a great deal of confusion. In a very short time, somebody called out, “ O'Connor ‘ is stopped ;’ and he was brought back again to the Bar. I should state to your Lordship, that, just at the time that I lost sight of Lord Thanet, and of the particular individuals, a person had got upon the table, which drew off my attention from what was going on at the Bar, and had drawn a sabre which was lying there.

Q. That was part of the baggage of Mr. O'Connor, which had been produced upon the trial ?

A. It was. He drew that sabre, and placed himself between the Judges and the part of the Court where the confusion was, obviously to prevent any persons from advancing towards the Judges—if I may use the phrase, to defend the Judges. I did not at that time see the face of the person who had it; and, therefore, I had some apprehension it might be in the hands of some imprudent man, who might do mischief; if I had known who it was, I should have known that he had discretion enough not to misuse it.

Q. It was Mr. Stafford, the witness—was it not?

A. Yes. I said to him, not seeing his face, “Don’t strike.” When I saw who it was, I was satisfied. After the riot had ceased, a number of persons got upon the table towards the Judges—some to ask questions upon the subject of the legality of this warrant; and others, whether the Prisoners were not entitled to their discharge; and others, certainly, to allay the fervour that seemed to be at that time operating upon the minds of many persons who were in Court—to restore order, in fact; I should, perhaps, use that phrase. The particular conversations and expressions that were used by any of those persons upon the table, I cannot pledge myself to recollect.

Q. I will take the liberty of asking you, I believe you was at a distance from the Learned Judge, Mr. Justice Lawrence?

A. I was. Mr. Justice Heath and Mr. Justice Buller both sat between me and Mr. Justice Lawrence.

Q. Therefore, I would ask you, whether you had an opportunity of hearing any particular conversation addressed to the Learned Judge who is now present?

A. No. I think I remember Mr. Sheridan, speaking to Mr. Justice Buller, or Mr. Justice Heath, or both ; and I remember Lord Thanet being upon the table after Mr. O'Connor was brought back, apparently to me conversing with the Learned Judge, Mr. Justice Lawrence.

Q. What he said, you did not hear ?

A. I did not ; for at that time there was a great deal of noise in the Court.

Q. Was it after that, that you observed Mr. Sheridan talking with the Learned Judge ?

A. I think it was ; the object of Mr. Sheridan seemed to be to allay the tumult ; and then he crossed the table, and conversed with the Learned Judges.

Q. After the direction which you have stated to have been given by the Court, and after the sentence of death had been passed, was any order given by the Court for the discharge of Mr. O'Connor, or any intimation that he was to be discharged ?

A. Certainly not ; but it was broadly expressed by the Court that he was not to be discharged.

Cross-examined by Mr. ERSKINE.

Q. I have very few questions indeed to put to you. You state, that when the verdict of Not Guilty had been pronounced, some persons, but whom you do not know, seemed to inquire, as if for information, whether the Prisoners were to be discharged or not?

A. Not quite so—not to inquire; but some persons exclaimed, "Then they are discharged."

Q. Who those persons were, you do not know?

A. I do not.

Q. You say that you observed Lord Thanet standing fronting the Court, as I am now fronting the Court?

A. Yes, certainly.

Q. With his back to the Prisoner?

A. Certainly so.

Q. He was in that position when the Jury came in with their verdict?

A. I think so.

Q. You have observed that Mr. O'Brien looked round to Mr. O'Connor, and then looked down as you have described it; did Lord Thanet continue all that time in the same position?

A. The time when Mr. O'Brien looked round, was a very short time before Mr. O'Connor jumped over the Bar; from that time, certainly, Lord Thanet

had continued in the same position, standing as I described.

Q. While the Learned Judge was passing sentence of death upon O'Coigly, did Lord Thanet still continue in the same position ?

A. Certainly he did.

Q. He was standing, as you observed, not looking this way towards the jury-box, or that way towards the narrow street, but he was looking towards the Court ?

A. Certainly. He had his back against the Bar, and looking directly towards the Court.

Q. You then describe, that upon the officers coming in, and pressing through this narrow place, the next that you saw of Lord Thanet was with a stick with both his hands up ?

A. Yes. I did not mean that the officers came in then, but that they had come in some time before, having declared that they had a warrant ; but, certainly, upon Mr. O'Connor jumping over the Bar, the officers rushed forward to follow him ; after they had made several pushes it was that I saw Lord Thanet in that position.

Q. *Did you ever observe any change in the position of Lord Thanet, from the time you first saw him, till you saw him in the situation you have now described to the Court ?*

A. *I did not observe any change.*

Q. *But a stick over his head ?*

A. *Yes ; and, perhaps, I should say this—it*

seemed to be, when he held it in that way, that it was to defend his head.

*Rev. WILLIAM HUSSEY sworn.—Examined by
Mr. ADAM.*

Q. I believe you are a clergyman of the Church of England ?

A. I am.

Q. Were you at Maidstone, at the trials of Mr. O'Connor and Mr. O'Coigly ?

A. I was.

Q. Were you there at the time the Jury were out deliberating upon their verdict ?

A. Part of the time.

Q. Were you in Court at the time they returned with their verdict ?

A. I was.

Q. Do you remember seeing Lord Thanet in Court at that time ?

A. I saw Lord Thanet in Court.

Q. In what part of the Court was you placed ?

A. At that immediate period of time, I cannot expressly say in what part ; I saw Lord Thanet in two different parts of the Court.

Q. In what part of the Court did you first see Lord Thanet ?

A. The first time when he came to give his evidence, and the next time at the table fronting the

Judges, and afterwards sitting under the Bar at which the Prisoners stood.

Q. Upon a bench, with his back to the Prisoners?

A. With his back to the Prisoners.

Q. Do you remember seeing the Bow Street Officers there?

A. I saw a person who, I was informed afterwards, was a Bow Street Officer: I did not know, at that period, that he was a Bow Street Officer.

Q. Do you recollect the Jury delivering their verdict?

A. I do.

Q. Can you state to my Lord and the Court, any thing that struck your attention upon the Jury delivering their verdict of Not Guilty with respect to Mr. O'Connor?

A. After the Jury returned their verdict of Not Guilty, I observed Mr. O'Connor make a feint to get over the Bar; he put up his foot as if he would get over.

Q. Did you observe any thing more pass at that time?

A. I cannot speak expressly as to the direct period of time at which I saw the circumstance happen; whether it was at that period, or a future period, I must say that I cannot immediately recollect.

Q. What was that circumstance?

A. That the Earl of Thanet was in that situation

which I before mentioned, sitting with his back towards the Bar, nearly under the Prisoners, or under the Jailor ; and as the person was pressing forward from that side of the Court to get towards the Prisoners—

Lord Kenyon. What person ?

A. I cannot say who the person was : I was informed afterwards he was a Bow Street Officer : and, indeed, from the circumstance of his mentioning to the Jury what was the matter—he said he had a warrant to apprehend Mr. O'Connor—I supposed him to be a peace-officer.

Mr. Adam. Then, as this person, who held a paper in his hand, and pressed forward—

A. I saw no paper in his hand ; *Lord Thanet* seemed to press himself against the Bar with his body inclined somewhat towards that person, apparently with an intention to interrupt his progress towards the Prisoner.

Q. In what situation was Mr. O'Connor at that time ?

A. Mr. O'Connor, at that period, was standing at the Bar.

Q. Go on, and state what you saw after this.

A. Upon my word, from the confusion that was in the Court, I do not recollect any particular circumstance that I can take upon me to speak to.

Lord Romney sworn.—Examined by Mr. Wood.

Q. Was your Lordship in Court at the time of the trials of the Prisoners at Maidstone?

A. Yes.

Q. In what part of the Court did your Lordship sit?

A. Next to Mr. Justice Lawrence, upon the Bench.

Q. Does your Lordship know the Defendant, Mr. Fergusson?

A. I did not know Mr. Fergusson before the trials at Maidstone: I had seen him so often then, that I knew him in his gown; if I was to see him out of his gown, I do not know that I should know him—I knew him perfectly in his gown.

Q. After the riot began, what did your Lordship observe?

A. When the riot first began, I looked very much towards the Prisoner O'Connor, and saw him get over the Bar, and go towards the narrow street. I looked at the other part of the Court, where there were individuals forcing a passage through, which were the Bow Street Officers; I saw them forcing their way, and blows were struck. I paid particular attention to Mr. O'Connor, and then, almost at the same moment, turned my eyes to a different part upon the table, where there was a sword brandishing about: I don't know whether it was drawn or not, for I could not see at that time; but I should

imagine that it was drawn : upon which I thought things seemed to bear a very serious aspect, and I let myself down from the Bench, where I was sitting, and crossed the table directly to where I saw the Prisoner escaping from. I dipped my head under the broad sword that was brandishing about : I got immediately to the end of the table, near that part of the Court where the Prisoner escaped from ; and as soon as I got there, I immediately saw the Prisoner O'Connor brought back to that part of the table by several javelin-men and others. I then immediately said to the javelin-men, " Form yourselves round the " Prisoner, and let no one approach you," or, " Let " no one come round you," or words to that effect ; " for he is not yet," I meant to say, and imagine I did say, " discharged." I was told afterwards that I had said wrong—for I had said, he was not acquitted ; upon which I answered, I might very possibly make use of the word *acquitted* ; but, if I did, it was a mistake ; I meant *discharged*.

Mr. Garrow. Will your Lordship mention who it was that said that ?

A. I think it was Mr. Fergusson : he said, " My " Lord, you are mistaken ; you said, ' He is not " acquitted'—he is *acquitted*.' I think it was Mr. Fergusson. I have no doubt myself, as Mr. Fergusson mentioned it, but that I did make use of the word *acquitted*, in the hurry ; I have no doubt of it : it was not my intention to say he was not acquitted, but that he was not *discharged* ; I meant

to make use of the word that I heard Mr. Justice Buller make use of from the Bench.

• *Mr. Wood.* Does your Lordship recollect whether the Court said any thing, before that, about his not being discharged?

A. Yes; and I meant to make use of the word *discharged*, because I had heard Mr. Justice Buller use the word *discharged*.

Q. Publicly in Court?

A. Yes: I had no private communication with Mr. Justice Buller at all, because Mr. Justice Lawrence sat between us.

Q. Did your Lordship notice any particular persons that were acting in the riot?

A. Really I felt myself so engaged in a thing of this sort, and I should have been so much hurt if, in the confusion, any disgrace had been brought upon a Court of Judicature generally, and for myself in my situation in the county of Kent in particular, that I did not take such notice of the circumstances that were taking place, as I did to take care, with others, to prevent a rescue, which I should have considered an indelible disgrace and stain upon our county. I certainly could not say who it was in the passage that was struck by the Bow Street Officers; for when I looked to that part, the confusion was very great, and the blows very frequent in that part.

Q. Did your Lordship hear any conversation be-

tween Lord Thanet and Mr. Justice Lawrence, after Mr. O'Connor was secured ?

A. It is really a very considerable time since the riot ; and, at the same time, as many different things were going on at that moment, I cannot positively swear ; and, therefore, unless I was perfectly convinced, it can be of no consequence.

Lord Kenyon. It is my duty, and I am bound to say your Lordship must recollect as well as you can.

A. If your Lordship will give me leave to say, that at this distance of time, ten or eleven months, I really cannot swear whether I heard it at the time, or whether it was a conversation afterwards, that such and such things had passed ; and, therefore, as I cannot answer positively, I must, for myself, beg leave to decline answering it. I certainly had forgot it ; and some time past, three or four months ago, after considering with myself, I thought I did recollect something of such a conversation passing : but it certainly had for some time slipped my memory ; and, therefore, without I could absolutely ascertain it, I cannot speak to it ; there was a great deal of confusion.

Cross-examined by Mr. GIBBS.

Q. You say, you intended to say that the Prisoner had not been discharged ; but you had been informed by some one, that you had said he was

not acquitted ; and then you corrected yourself, and said you meant to say *discharged* ?

A. I have no doubt but that, in directing my speech to somebody in the hurry of the business, I said he was not acquitted.

Q. There was but one person that said that ?

A. Mr. Fergusson said it repeatedly ; and then I said, " I meant to have said *discharged*—if I had said *acquitted*, it was a mistake ;" and then Mr. Plumer came up, and I told him that Mr. Fergusson had said so.

Lord Kenyon. There can be no occasion to go into all that conversation.

Mr. Gibbs. All I wish to have the honour of asking your Lordship is this—There was a person who said to your Lordship, " You have said he is not *acquitted* ;" and then you corrected yourself ?

A. Yes ; and that person, to the best of my knowledge and belief, was Mr. Fergusson ; and I told Mr. Plumer that Mr. Fergusson had said it repeatedly : three or four might have repeated it in the confusion of the Court ; I could not distinguish voices.

Sir JOHN MITFORD sworn.—*Examined by Mr. FIELDING.*

Q. Have the goodness to describe what was your particular situation in the Court at Maidstone.

A. You mean after the Jury had withdrawn, I suppose?

Q. If you please.

A. I went up to Mr. Justice Buller and spoke to him; and then I placed myself immediately under him, opposite to Mr. O'Connor, upon whom I kept my eye fixed when the Jury came into Court and gave their verdict. *I observed Mr. O'Connor and Mr. Fergusson; I particularly fixed my eyes upon them. I observed Mr. Fergusson speaking to Mr. O'Connor, and Mr. O'Connor put his leg over the Bar: I called out, "Stop him."* Mr. Fergusson said, "He is discharged." I said, "He is not discharged." Mr. Fergusson then addressed Mr. O'Connor, and said, "You are discharged." I repeated, "He is not discharged," I believe more than once. I observed the Jailor leaning over towards Mr. O'Connor, and I think he took hold of him.

Mr. Garrow. The other Prisoners were between the Jailor and Mr. O'Connor, were they?

A. Two of them were, and the other two behind Mr. Binns and Mr. O'Coigly; and then Mr. Allen and Mr. Leary were behind. Then Mr. O'Connor drew back his leg: there was then a disturbance immediately under Mr. O'Connor, and some person or persons pressing forward, and Mr. Fergusson made some complaint to the Court upon the subject; then Rivett, the officer, who appeared to be the person pressing forward, said—

Mr. Fielding. When you say *pressing forward*, in what kind of direction was that pressure?

A. Towards Mr. O'Connor.

Q. That was not forward towards the body of the Court, but towards Mr. O'Connor?

A. It was towards the body of the Court, in order to get to Mr. O'Connor, and place himself under Mr. O'Connor, as I conceived. Rivett said he had got a warrant against Mr. O'Connor; and the Jailor also said something upon the same subject, but I do not recollect the particular words; and Mr. Justice Buller spoke to the officers, as I understood, to keep the Prisoners back, or some expression of that description, and then almost instantly began addressing Mr. O'Coigly.

Lord Kenyon. With a view to pass the sentence?

A. With a view to pass the sentence. I recollect that this was almost instantaneous; because I was about to speak to the Court—and it was so sudden, that I thought it was indecent to interrupt Mr. Justice Buller, otherwise I should have spoken to the Court.

Mr. Garrow. Mr. Attorney General had retired from the Court?

A. He had retired from the Court, and had desired me to speak to Mr. Justice Buller upon the subject, which I had done after Mr. Justice Buller had passed sentence upon Mr. O'Coigly. I fixed my eye particularly upon Mr. O'Connor, and I observed Mr. Fergusson, and some other persons whom I did

did not know, encouraging Mr. O'Connor to go over the Bar. Mr. O'Connor appeared for a little while to hesitate, but it was only for a moment: he then sprung over the Bar, and leaped into the lower part of the Court, between the Bar and the Jury-box, which was on the right hand of the Judges. From that time I did not see Mr. O'Connor until he was brought back by the officers; for at the same instant that Mr. O'Connor jumped over the Bar, three or four persons whom I did not know leaped over from the box opposite the Jury-box upon the table.

Mr. Garrow. Was that box the box where the witnesses had been examined?

A. Where the witnesses had been examined, and where persons who attended the trial through curiosity had been. They went to the spot where the riot was, and jumped among the rioters: all the lights, except those before the Judges, and the lights which hung in the middle of the Court in a kind of branch or chandelier—I do not recollect exactly what sort of a thing it was; it gave a considerable light—but all the other lights were extinguished.

Mr. Garrow. The chandelier that hung over the Prisoners?

A. In the middle of the Court: there were, I think, three patent lamps in it—it gave a great deal of light. *Mr. Fergusson, at the moment that Mr. O'Connor jumped over the Bar, turned himself round, and appeared to me to follow Mr. O'Connor;*

but I cannot positively say that he did so, because the persons who rushed from the other side of the Court came between me and him ; but I recollect that when they were passed I did not see him. I then attended to the prisoner O'Coigly, apprehensive that he might escape ; and that attracted my attention in some degree from what was passing in the riot : he was perfectly tranquil, and I was convinced from his behaviour that he did not mean to stir ; and therefore my attention was drawn back again to the riot. Mr. Knapp's clerk, Mr. Stafford, jumped upon the table, and drew Mr. O'Connor's sword—a kind of broad sword, I think—which was lying upon the table ; and he flourished it over the heads of the persons who were engaged in the riot below. I got up to speak to him, to desire him to put up the sword, which, after some time, he did ; and soon after Mr. O'Connor was brought back. Mr. Stafford being between me and the rioters, prevented me from seeing what passed after the riot was over. I do not recollect any thing material except Lord Thanet ; that is, a person whom I understood to be Lord Thanet. I did not know Lord Thanet's person ; that is, I did not recollect him : I had seen him many years ago. I saw a person whom I understood to be Lord Thanet, come across the table ; and I saw him in conversation with Mr. Justice Lawrence : that conversation was a little warm, but I did not hear the particulars of it. When my Lord Thanet left Mr. Justice Lawrence, and went across the table again, I

heard him say, “ *I thought it was fair he should have a run for it.*”

Q. Was that addressed to the Judge in parting from him and going across the table?

A. I think it was not addressed to the Judge, but as he turned from the Judge: *he said it rather in a tone of anger; I think it was in consequence of what had fallen from Mr. Justice Lawrence, which I did not exactly hear.*—I do not recollect any thing else.

Mr. Fielding.—*Will you have the goodness to explain what you meant by encouraging Mr. O'Connor to get over the Bar?*

A. *It was not immediately encouragement, by any words that I could hear; but by action, as if he was encouraging him to come over the Bar, and by insisting that he was discharged.*

Cross-examined by Mr. BEST.

Q. *While Mr. Fergusson was speaking to Mr. O'Connor, he was in his place at the Bar?*

A. *He was.*

Q. *There was a vast number of other persons at the same time speaking to Mr. O'Connor?*

A. *Yes.*

Q. *I believe it was generally understood in the Court at that time that Mr. O'Connor would be acquitted?*

A. *I do not know whether they were congratulating him; it was after he was acquitted.*

Q. You say he was in his place at the Bar: do you recollect ever seeing him quit his place at the Bar?

A. I have already said I think he did: I have already stated, I am not positive as to the time, but that I did not see him when the rush that passed between me and Mr. O'Connor was made.

Mr. Justice HEATH sworn.—Examined by Mr. ATTORNEY GENERAL.

Q. Your Lordship, I believe, was one of the Commissioners of Oyer and Terminer at Maidstone?

A. I was.

Q. Did Your Lordship observe any riot that took place?

A. I did; and if you will give me leave I will state all that I observed. I was applied to in the course of the day by a messenger from the Secretary of State, who informed me that a warrant was issued for the apprehension of Mr. O'Connor in case he should be acquitted, and desiring to know if the Court would permit him to execute that warrant if he should be acquitted; and we gave leave. After the verdict had been given, and, I believe, after sentence of death had passed, this messenger very unadvisedly went from that corner of the box where the Prisoners were confined, to that corner which was near the door, and said aloud, "My Lord, may I now execute my warrant?" Presently after I

saw Mr. O'Connor thrust one leg over the box, and then draw it back again: afterwards, in the space of a minute, I saw him leap over the box. I could not see any person between him and the door at that moment: immediately a great scuffle and a riot ensued, and a great deal of fighting, such as I never saw before in a court of justice; it appeared to me to be between the constables with their staves on one side, and those who favoured the escape of O'Connor on the other. I know not from whence the favourers of Mr. O'Connor came; it being dark, I could not see exactly the number of the combatants; it was dark in that place where they were fighting: but from the exertion of the constables in plying their staves, it seemed to me that there must have been ten or twenty, I suppose, all fighting together. I saw a man with a naked sabre, brandishing it over the heads of the combatants; one of the officers of the Court, I believe, came up to me with a brace of pistols, which, I believe, belonged to Mr. O'Connor, and lay upon the counsel-table, saying, "I have secured these at last." This combat, I suppose, might last five, six, or seven minutes; I cannot exactly say how long: but, in the course of it, I saw Mr. Fergusson standing upon the table, together with many others; he turned round towards the Commissioners, and said, I believe particularly addressing himself to me, "My Lords, the constables are the persons that are the rioters; they are the occasion of it," or words to that effect. Before I

could give him an answer he turned round again towards the combatants; it was impossible, from the noise, for him to hear any thing I could say to him: my attention was chiefly turned from him to the more interesting scene of the fight; but I must do him the justice to say, that, in the very short time I saw him, which was not above a minute or so, I did not observe him say or do any thing to encourage the riot. I thought myself in great danger, and that we were all so. I could not guess at the view of the rioters, how far it extended, or whether they had any and what arms; indeed we were more alarmed, because we had intelligence beforehand that there was a very disaffected party in the town.—That is all I have to say.

CHARLES ABBOT, *Esq.* *sworn.—Examined by Mr. LAW.*

Q. Was you in Court when the Jury brought in their verdict?

A. I was.

Q. Did you observe any motion made by Mr. O'Connor towards quitting the Bar?

A. I do recollect that Mr. O'Connor made a motion with his body as if he would leave the Bar. *Mr. Fergusson, almost at the same instant, said, "He is " discharged."* *Mr. Solicitor General then called across the table, "No, stop him; he is not dis- " charged."* Just at the same instant one of the of-

ficers, either Rivett or Fugion, but I cannot say which, got upon the form and pressed forward towards Mr. O'Connor, and at the same time said he had a warrant ; there was then a little confusion for a short space of time, but not very long ; the Prisoners resumed their places, and Mr. Justice Buller proceeded to pass the sentence upon Mr. O'Coigly. During this time I had been sitting almost immediately under Mr. Justice Buller, very nearly so. At the very instant that Mr. Justice Buller had closed the sentence, I observed Mr. O'Connor leap over from the Bar towards his left hand ; a very great tumult and confusion immediately took place ; and, shortly afterwards, I saw a person, whom I soon learned to be Mr. Stafford, draw a sabre, and went to that corner of the table where the confusion was. Mr. Garrow cautioned him not to strike ; and he did not appear to aim the sabre at any body, but merely to keep it moving over their heads. When this second tumult began I rose up and stood upon the form upon which I had been sitting, so that I was standing before Mr. Justice Buller and Mr. Justice Heath, with my back towards them : when the confusion began to abate I turned round, and entered into some conversation with Mr. Justice Buller ; and soon after this, while I was in that situation, I saw my Lord Thanet standing on the table, nearly before Mr. Justice Lawrence, which was towards my right hand. *I heard Mr. Justice Lawrence speak to Lord Thanet to this effect—“ I think it*

" would be an act of kindness in Mr. O'Connor's friends to advise him to go quietly to the prison, " lest some mischief should happen :" I do not pretend to state the learned Judge's words ; but the substance, I believe, I am correct in. Lord Thanet then turned abruptly round towards his right hand, which brought his back towards me ; and I did not distinctly hear the first words that he uttered, but the concluding words were either " to have a run for it," or " fair " to have a run for it." I will not be quite certain of the word " fair ;" but of the words " to have a run for it," I am quite certain. I have the more particular recollection of this, because, shortly afterwards, I observed Mr. Sheridan at the same part of the table, and heard Mr. Justice Lawrence speak to him to the same effect that he had before spoken to my Lord Thanet. Mr. Sheridan answered with great civility, either that he had done so, or that he would do it : it was the different manner of Mr. Sheridan to that of my Lord Thanet that made me recollect that.

Q. Do you recollect Mr. Justice Lawrence making an observation upon that ?

A. Yes.

Mr. Erskine. To whom ?

A. To Mr. Sheridan.

Q. In the presence of Lord Thanet ?

A. No ; he was gone : and I recollect that Mr. Justice Lawrence said to Mr. Sheridan, that he had made the same observation to another gentleman.

Mr. Law. Have you any doubt of the words spoken by Lord Thanet, " to have a run for it ?"

A. I have not.

JOHN RIVETT *sworn.—Examined by Mr. GARROW.*

Q. Did you attend at Maidstone as a witness upon the trial of O'Connor and others ?

A. I did.

Q. Was any application made to you by one of His Majesty's messengers to assist in apprehending Mr. O'Connor if he should be acquitted by the Jury ?

A. Yes, there was.

Q. Did you, in consequence of that, go into the Court with a view to give that assistance ?

A. Yes, I did.

Q. Who went with you ?

A. Fugion, my brother-officer.

Q. He was another officer of the police ?

A. Yes, and the messenger ; we all three went into the Court together.

Q. Is Fugion since dead ?

A. He is.

Q. After you had gone into Court, do you remember seeing a gentleman of the name of Thompson ?

A. I was informed that was the gentleman's name.

Q. Should you know him now if you were to see him ?

Q. I think I should : I have never seen him since—I was very near the Bar where the Prisoners stood.

Q. At which end of the Bar was you ? was you on the side the farthest from Mr. O'Connor, or the nearest ?

A. Nearest to the Jailor, which was the right-hand side of the Bar.

Q. While you was in this position had you any conversation with a gentleman you understood to be Mr. Thompson ?

A. Yes.

Q. State it to the Court.

A. The gentleman whom I understood to be Mr. Thompson, a Member of Parliament, asked me, “ What I did there ? ” I made him little or no answer. He then said, “ What business have you “ here ? ” or words to that effect ; “ have you got “ any thing against Mr. O'Connor ? ” meaning, as I supposed, a warrant ; I did not know what his meaning was ; I replied, “ No.” I believe he asked Fugion likewise, to the best of my recollection.

Q. You and Fugion had been both examined as witnesses upon the circumstance of the apprehension of Mr. O'Connor ?

A. We had.

Q. And, to the best of your recollection, Mr. Thompson put the same inquiry to Fugion ?

A. He did.

Q. What then passed ?

A. I then observed a gentleman, whom I knew to

be Mr. O'Brien, at the farther end of the Court; I observed Mr. O'Brien whispering something to Mr. O'Connor over the Bar.

Q. Describe particularly where Mr. O'Brien was placed during that time?

A. He was on the left-hand side of the Bar, by Mr. O'Connor; I was on the right-hand side, and he on the left: a few minutes might elapse, when Mr. Thompson put up his finger to catch the eye of Mr. O'Brien, and beckoned to him; a few minutes might elapse, when Mr. O'Brien came to the same side where I stood.

Q. Did Mr. Thompson still continue standing by you?

A. Yes, he did.

Q. How long was this before the verdict was given?

A. While the Jury were out, considering their verdict,

Q. When Mr. O'Brien came to the place where you and Mr. Thompson were standing, what took place?

A. Mr. O'Brien and Mr. Thompson spoke to each other; but what they said I cannot tell. Mr. O'Brien then addressed me, and said, "Have you got a warrant against Mr. O'Connor?" I said, "No." Then he said, "Then Fugion has."

Q. Do you mean that he made use of Fugion's name?

A. Yes; Fugion was present, and he answered

immediately that he had not. He said, "Fugion, " have you got the warrant?" He addressed himself to Fugion: Fugion said, "No." Then Mr. O'Brien said, "Then the Messenger has."

Q. Had Wagstaffe his badge as King's Messenger on at that time?

A. I do not recollect.

Q. Do you mean to say that he addressed himself to the Messenger?

A. No; he said, "Then the Messenger has." I then replied, "I can answer only for myself." Mr. O'Brien then said, "I will bet you three guineas," I think it was, to the best of my recollection, "that you have." Fugion said, "Done," I believe, or words to that effect. Mr. O'Brien then left the side of the Court that I was on, and returned to the left-hand side where Mr. O'Connor was, and whispered something to Mr. O'Connor; but what I cannot tell.

Q. What observation did you make at that time, with respect to any other persons in the Court, as to any change of position?

A. It remained quiet till the Jury were coming in: a number of gentlemen seated themselves directly before me in the place where I stood.

Q. That was upon the bench made for the Prisoners' attorneys?

A. Yes,

Q. Many gentlemen seated themselves there?

A. Yes.

Q. Did you know any of those persons?

A. Not that were sitting down before me ; some time had elapsed, when there was some noise when the Jury were coming into Court, " Make way for " the Jury," or something to that effect. I then endeavoured to get as nigh Mr. Watson, the Jailor, as I possibly could. I went to step my foot up to get nigh the Bar, and I was pulled down again by my leg ; I turned round, and the person who pulled me down, I supposed, was Mr. Thompson.

Q. Do you mean to say you know it was Mr. Thompson ; or, from the situation he was in, that you apprehended it was Mr. Thompson ?

A. Exactly so.

Q. You do not aver the fact positively ?

A. No ; but when I turned round he was close to me.

Q. And therefore you conclude he was the person that pulled you ?

A. Yes. The Jury then came in, and I endeavoured to get up again as near the Bar as I possibly could.

Q. When you use the expression, that you endeavoured to get up as near the Bar as you could, was there any thing that prevented you from getting there ?

A. Only the gentlemen sitting there.

Q. With what view was that ?

A. With a view to assist in securing Mr. O'Connor if he should attempt to make his escape.

Q. Upon your endeavouring to get as near the Bar as you could, what happened?

A. The Jury were in, and the Court called "Silence." The Jury had given their verdict—Mr. O'Connor and the others, Not Guilty; and Mr. O'Coigly, Guilty; and then I got up nigh the Bar. I observed something in Mr. O'Connor that struck me as if he meant to make his escape; at that moment there was some noise in the Court, and Mr. Fergusson says, "What business has that fellow there, making such a noise?"

Lord Kenyon. Who was that addressed to?

A. It was addressed to the Court, I believe. Upon that I got up upon one of the benches, and addressed the Judge, and told him my reasons for being there. I told His Lordship I had a warrant from the Duke of Portland to arrest Mr. O'Connor; the Judge replied, "I should have him," or words to that effect; and desired the Jailor to take care of all the Prisoners for the present.

Q. Which of the Judges was that?

A. Judge Buller; then the sentence was passed upon Mr. O'Coigly. As soon as the Judge had so done, Mr. O'Connor immediately jumped out of the Bar: there was then a very great confusion in Court; those gentlemen who had so placed themselves before me, stood up; I called out, "Shut the door, shut the door," several times.

Q. After Mr. O'Connor had jumped over the Bar, which way did he take?

A. He took to the left.

Q. He took the direction going from you?

A. Yes.

Q. That was, as we have been describing, towards the narrow street?

A. Yes; I then endeavoured to get forward, but was prevented by those gentlemen who had so placed themselves quite before me and Fugion, and the Messenger.

Q. Now describe particularly what passed which prevented you, with your assistants, from following Mr. O'Connor.

A. I was pulled down, or shoved down, twice or three times; but by whom, I am not able to say. I THEN JUMPED FORWARD AS WELL AS I WAS ABLE, AND WAS ENDEAVOURING TO PURSUE MR. O'CONNOR; MR. FERGUSSON JUMPED UPON THE TABLE, AND WITH A STICK FLOURISHED IT IN THIS WAY, TO PREVENT MY GETTING FORWARD.

Q. Flourished it over your head?

A. He flourished it with an intent, as, I presume, to stop me.

Q. Was Mr. Fergusson in his professional dress?

A. Yes; he was. I THEN SPRUNG AT HIM, AND WRENCHED THE STICK OUT OF HIS HAND, AND HE RETURNED BACK TO HIS FORMER SITUATION.

Q. He went from off the table, and returned to his place at the table?

A. Yes; otherwise I should have struck him with the stick which I had wrenched from him, if he had not that moment got away.

Q. Describe what more took place.

A. AS SOON AS I RECOVERED MYSELF, I WAS THEN KNOCKED DOWN BY SOME PERSON WHO DROVE AGAINST ME—NOT WITH A STICK; AND AS SOON AS I HAD RECOVERED MYSELF, I SAW THE PERSON WHO HAD SO SHOVED ME DOWN; I IMMEDIATELY STRUCK HIM WITH MY STICK; I REPEATED MY BLOWS THREE OR FOUR TIMES; THAT PERSON CALLED OUT, "DON'T STRIKE ME ANY MORE." I REPLIED, "I WILL; HOW DARE YOU STRIKE ME?" That person I so struck was, as I understood while I was in Court, the Earl of Thanet.

Q. Are you quite certain that the person you struck and repeated your blows with a stick, was the person who shoved you down?

A. Yes.

Q. And that person, whilst you continued in Court, you understood was my Lord Thanet?

A. Yes.

Q. Should you know his person now?

A. I think I should.

Q. Look round the Court, in all parts of it, and see if you see His Lordship here—is that the person you struck who sits next Mr. Gibbs?

A. I believe it is; I cannot positively say, because I have never seen the gentleman but once since that time.

Q. From the appearance of His Lordship, from his person and make, do you now believe him to be the person?

A. I cannot positively say.

Q. Have you reason to believe that that gentleman is the person?

A. I have some reason to believe so, FROM HIS SIZE.

Q. Did you afterwards, in the course of your continuance in Court, see Lord Thanet in any other part of the Court?

A. He was pointed out to me immediately after.

Q. Upon the spot?

A. Upon the spot.

Q. I don't know whether you recollect how he was dressed?

A. No, I do not.

Q. Who was the person that told you that the name or title of the person, with whom you had the contest, was Lord Thanet?

A. Mr. O'Connor, after being secured and brought back again into the Bar.

Q. Mr. O'Connor gave the title of Lord Thanet to the person with whom you had had the contest?

A. Yes.

Lord Kenyon. Was it a conversation addressed by Mr. O'Connor to you?

A. It was.

Mr. Garrow. After you had given these blows to

the person supposed to be Lord Thanet, what passed?

A. I observed Mr. O'Connor was in custody—he had been secured by the door-way; I then assisted in getting him back to the Bar.

Q. You described just now, that when you was attempting to push on to prevent Mr. O'Connor escaping, you was interrupted by the persons who had placed themselves before you?

A. Yes.

Q. Do you mean that it was merely by the accident of their being there, or that they gave you any obstruction?

A. While the Jury were out, they came, and a great number more than had been there at the time of the trial, and placed themselves just before where I stood.

Q. Are you acquainted with Mr. Gunter Browne?

A. No, I am not.

Q. Do you remember any body remarkable in his appearance, or person, obstructing Fugion or Wagstaffe?

A. No, I did not observe it; I was so engaged myself.

Cross-examined by Mr. ERSKINE.

Q. You have stated to my Lord and the Jury, that, from something that passed, you expected Mr. O'Connor to attempt to make his escape?

A. Yes.

Q. I take it for granted, that the apprehension that he wanted to make his escape, induced you to go forward?

A. Yes. I got as near the Bar as I could.

Q. It made you more desirous with the other officers to push forward quickly?

A. Surely so.

Q. If you had had no reason to suppose Mr. O'Connor was endeavouring to escape, and that others had a disposition to assist him, I take it for granted you would have gone on more leisurely?

A. No doubt.

Q. But the apprehension that you had, that you might be disappointed in the execution of your warrant, made you go on with considerable rapidity?

A. I went swifter than I should have done if I had not been molested, no doubt.

Q. The line that you was going in at that time, was a place not very unlike where I am standing now, immediately before the Prisoners?

A. Yes.

Q. That is to say, a place like that I am now standing in, divided by something like this from the place where the Counsel sat?

A. Just so.

Q. *You say that you jumped forward as well as you was able, and was endeavouring to pursue Mr. O'Connor, when Mr. Fergusson jumped upon the*

table, and with a stick flourished in this way, to stop you?

A. Yes.

Q. That was the first obstruction you met with?

A. No. I was pulled by the leg.

Q. But, except that pulling by the leg, after you pursued your progress through the Solicitors' box, the first interruption you met with, was by Mr. Fergusson jumping upon the table?

A. No. I had been pushed down before that.

Q. Had you struck any body before that?

A. No.

Q. Had you shoved or pushed any body?

A. I cannot tell that; in the confusion I might.

Q. You had not seen Lord Thanet till after this had passed with Mr. Fergusson?

A. To my knowledge, I had not.

Q. Lord Thanet is a very strong, big man?

A. Yes, he is so.

Q. Then you had not seen Lord Thanet till after you had been with Mr. Fergusson, at this time upon the table?

A. No, I had not.

Q. And you had shoved against several others?

A. I probably might, in the endeavour to get forward.

Q. I would ask you, how you came to leave the line of the Solicitors' box, as you was advancing towards Mr. O'Connor to go up where Mr. Fergusson stood?

A. I did not go up to where Mr. Fergusson stood; the first time I placed myself, was by the right-hand side of the Bar; Mr. Fergusson might have attacked me about the middle of the Bar.

Q. After you saw Mr. O'Connor jump over the Bar, and when you was apprehending that you might be disappointed in arresting him, you went forth with all the rapidity you could—Now, how came you to leave the course which directly led to him, to go up to the table where Mr. Fergusson stood?

A. There had been a great many gentlemen in the corner, and I got a little farther to the right.

Q. Towards the table where Mr. Fergusson was?

A. Yes.

Q. He was standing upon the table, and you upon the ground?

A. No; upon the bench. I might be upon the ground sometimes; for I was up and down several times.

Q. Mr. Fergusson was upon the table, flourishing a stick over you, in his wig and gown, and you forcibly wrenched it out of his hand?

A. Yes; and if he had not got away, he would have recollected me another time.

Q. Now you take upon you to say, that when this transaction took place, he returned to the table, and went to his seat?

A. He turned back, and went from me to the table.

Q. Did he go towards Mr. O'Connor?

A. No ; he turned towards the Judges.

Q. *Then it was not until after this transaction had passed, when Mr. Fergusson had flourished his stick in this manner, and had gone away towards the Judges, that you met with Lord Thanet ?*

A. *Just so.*

Q. *What interval of time might there be between Mr. Fergusson's going away in the manner you describe, and your meeting with Lord Thanet ?*

A. *A very few minutes—a minute or two.*

Q. *Where was it you met with Lord Thanet ?*

A. *A very little distance from me.*

Q. *Was he in the Counsel's seat, or where ?*

A. *I don't know what you call the Counsel's seat ; he was upon the benches. As soon as I turned from Mr. Fergusson, I was immediately shoved down.*

Q. *Was the person you took to be Lord Thanet upon a bench by where the table stood ?*

A. *I cannot say.*

Q. *Had he a stick ?*

A. *He had no stick, that I recollect.*

Q. *Then Lord Thanet having no stick, what assault did he make upon you ?*

A. *With his fist, in this way, shoved me down as I was going forward—he shoved me back.*

Q. *And then you struck him ?*

A. *Yes ; as soon as I recovered myself, I struck him two or three blows.*

Q. *With what ?*

A. The stick that I took from Mr. Fergusson.

Q. My Lord Thanet had no means of parrying that blow ?

A. No ; he did not attempt to strike me afterwards.

Q. Where was he at the time you struck him two or three times ?

A. When I hit him the first time, he fell upon his side, this way.

Q. Did you strike him after that ?

A. Yes.

Q. Mr. Fergusson was gone away ?

A. Yes.

Q. Mr. Fergusson did nothing to endeavour to extricate Lord Thanet from you ?

A. No.

Q. Did you strike any body else but Lord Thanet ?

A. I do not know that I did ; I might by accident.

Q. If you struck any body else besides Lord Thanet, it was by accident ?

A. Yes.

Q. Did you see either Fugion, Adams, or Wagstaffe, who were there, strike any body ?

A. No, I did not.

Mr. Garrow. Do you remember seeing Fugion strike any body ?

A. No.

Q. You said you was not before acquainted with the person of Mr. Thompson?

A. No.

Q. Should you know him again now?

A. I should think that little gentleman is him.

Mr. Gibbs. This gentleman? (*putting his finger on Mr. Thompson.*)

A. No; the next gentleman.

Q. This gentleman?—(*putting his finger on Mr. Bonney.*)

A. Yes; I think that is him.

Sir EDWARD KNATCHBULL sworn.—Examined by Mr. ADAM.

Q. Were you at the trial of O'Coigly, O'Connor, and others, at Maidstone?

A. I was.

Q. Were you present in Court at the time the riot took place?

A. I was.

Q. Will you state to my Lord and the Jury, whether you saw Rivett, the Bow Street Officer, engaged with any person, and with whom?

A. Previous to the sentence being passed upon O'Coigly, I saw Rivett, the Bow Street Officer, on the Prisoner's right hand; he produced some paper, which I understood at the time to be a warrant from the Duke of Portland to secure the person of Mr. Arthur O'Connor; after that, there was some con-

versation passed between the Judge and Rivett, which I do not immediately recollect. *I saw Lord Thanet seat himself under the Prisoners at the Bar, immediately at the conclusion of the sentence being passed upon O'Coigly.* I saw Rivett, who appeared to me to be placed in a situation in order to prevent Mr. O'Connor's escape. I saw Mr. O'Connor put his right foot, I think it was, upon the Bar, his left hand upon the railing, and his right hand either upon some person's shoulder that was sitting under, or else upon the rail, and jump into the crowd. I can only speak now as it struck me at the time ; it appeared to me that *Lord Thanet rose from his seat as soon as Mr. O'Connor jumped into the crowd ; he rose from his seat in order to prevent Mr. Rivett from securing the person of Mr. O'Connor.* There was some person—who it was, I cannot pretend to say ; but it was some person rather with a bald head—a person whom I should not know again if I was to see him—

Q. Can you tell how he was dressed ?

A. No, I cannot ; but there was some person who took hold of Rivett, at least it had that appearance to me in the bustle ; he took hold of Rivett, and pulled him, endeavouring to keep him back ; Lord Thanet was between Rivett, and where Mr. O'Connor had leaped out of the pound. I know nothing further ; that is all I saw of the business. I cannot pretend to say what passed afterwards.

Q. Did you see any fighting, or any blows struck?

A. It did appear to me, but I can by no means speak positively to it, that when a person, whoever it was, was endeavouring to keep Rivett back; Rivett, if I may make the gesture, for I do not know how to describe it, *Rivett, in this kind of way, struck Lord Thanet in the side, as it appeared to me; but I cannot say whether he struck Lord Thanet, or not, at that distance;* nor did I see him make a blow at any person.

Q. Are you sure that Lord Thanet was standing in that part of the Court?

A. I am quite certain that he went there when sentence had passed.

THOMAS WATSON *sworn.—Examined by Mr. Wood.*

Q. You are the Jailor of Maidstone, I believe?

A. I am.

Q. Was you in Court at the trial of these Prisoners?

A. Yes, I was.

Q. Do you remember the Judges giving any directions not to discharge the Prisoner?

A. Yes.

Q. When were these directions given?

A. Just before it ended.

Q. Do you mean before the sentence of death was pronounced?

A. Yes; I believe it was, to the best of my knowledge.

Q. Before the sentence was finished, did you say any thing to Mr. O'Connor?

A. I did; I said, "Mr. O'Connor, remember "you are not to be discharged, though you may be "acquitted." He said, "Why?" and I said, "Be- "cause I have no authority to discharge you, and, "therefore, you must not go."

Q. Was any thing said after that to Mr. O'Connor by any body?

A. A person just below him, after sentence was passed, said to Mr. O'Connor, "You are acquitted; "what do you stand there for? why don't you jump "over?"

Q. You don't know who that person was, I suppose?

A. No. Mr. O'Connor said, "Mr. Watson "says, I am not to go;" the gentleman below said, "Pshaw! you are acquitted: what do you stay "there for? jump over." He instantly sprung, and I instantly caught hold of the skirt of his coat as he got over, and held him; I then cried out, "Stop "him, stop him!" There were some of them shoving him behind to shove him through the wicket, and others shoving him back; but he was so secured, that they got him back into his place again.

Q. Did you see Rivett?

A. I did.

Q. Did you give any directions to Rivett?

A. I called to him, or his companion, and said, "I wish you would go out and get some constables and assistants;" for I suspected there would be something amiss by and by.

THOMAS ADAMS *sworn.—Examined by Mr. FIELDING.*

Q. You were coachman to Mr. Justice Buller at the time of the trial?

A. I was.

Q. Tell my Lord, and the Gentlemen of the Jury, what you observed in the Court after Mr. Justice Buller had passed sentence of death upon O'Coigly. First of all, where was your situation?

A. At the wicket-door that leads into the body of the Court, and that part of the Court that the spectators stand in.

Q. By the Jury-box?

A. Yes.

Q. Now, when sentence of death was passed, what did you observe going forward in Court?

A. Some person said, "Spring," but who, I know not; immediately Mr. O'Connor jumped over the Bar into the body of the Court.

Q. Did you observe the person of the man from whom the voice came?

A. No, I did not ; he came to the wicket-door, where I stood, and immedately caught him by the collar.

Q. Then he had made his escape so far as to get to the place were you were ?

A. He had ; I caught him by the collar of the coat, and says, " I'll be damned if I let you go ;" and immedately the wicket-door was opened ; I took the wicket-door in my left hand, and pulled it to, and bolted it ; and the moment I had bolted it, some person knocked me down.

Q. Did you see that person afterwards, to know him ?

A. My whole attention was to stop Mr. O'Connor.

Q. Then you don't know the person that knocked you down ?

A. I do not ; I immedately got up and seized Mr. O'Connor again, and said, " I'll be damned if " I let you go, let the consequence be what it will."

Q. When you had recovered yourself, and caught him again, do you remember who were the persons immedately about Mr. O'Connor ?

A. I saw several gentlemen between the officers and Mr. O'Connor.

Q. Did you know any of them by name, as it appeared afterwards ?

A. I saw my Lord Thanet ; His Lordship was as close to me as possible—rather behind me.

Q. How far was that situation, in which you saw

Lord Thanet, from the immediate front of the Bar from whence Mr. O'Connor had escaped?

A. He might be as far from the Bar, not quite so far, as I am from you—rather nearer to the wicket, where I stood.

Q. Did you see Lord Thanet do any thing?

A. I saw Lord Thanet with a small stick in his hand in this position, directly behind me; and Rivett, the Officer, came up, and struck at him with a stick; Lord Thanet says, “What did you strike “me for? I did not strike you.”—“You struck me “first,” says Rivett.

Q. Did you know any of the other persons that were by him?

A. I did not.

Q. Did you see any person there with a bald head?

A. I did not take any notice of a bald head; I saw a gentleman with a black collar and a pepper-and-salt coat on.

Q. What did that person do?

A. I did not see him do any thing; he was in the passage among the other persons that were endeavouring to obstruct the officers from taking Mr. O'Connor; I called out to some person to come forward to my assistance, for he made a spring, and the wicket-door was opened again; I made a spring and shut it again, and then Rivett and Fugion came up.

Q. How many persons do you think there were

between you and the Officers Rivett and Fugion who were coming up ?

A. I cannot say how many there were ; there might be seven, eight, or nine ; or there might not be quite so many.

Q. Do you know the persons of either Mr. Thompson, Mr. O'Brien, or Mr. Gunter Browne ?

A. I do not.

Q. Do you know the person of Lord Thanet ?

A. Yes, I believe I do know him ; I saw His Lordship give his evidence in Court.

Q. When Mr. O'Connor was last stopped by you, what became of him ?

A. I delivered him up to two Officers.

Q. How near to the Bar from whence he had escaped, did you come with him ?

A. I came quite up to the end of the Bar with him.

Q. At that time, what was the number of the people standing about ?

A. They were directly opposing the Officers from coming, when I was at the corner of the Bar with him.

Q. Do you know the person of Mr. Fergusson ?

A. I do not.

Q. Did you see any person in a Bar-wig and gown ?

A. Yes.

Q. In what situation was he ?

A. He was one of those who wanted to obstruct the Officers from coming forward.

Q. What did you observe him do?

A. I saw them stand all of a body together, so that the Officers could not pass to take him.

Q. Do you remember any complaint being made to the Judge, by any person, of having their head broke?

A. Yes; a gentleman said, "What recompense am I to have? I have got a broken head;" but I do not know who it was.

Q. Was that the person that you spoke of with a black collar?

A. I cannot say.

Q. Had he a bald head?

A. I cannot say.

HENRY WILLIAM BROOKE *sworn.—Examined by*
Mr. ABBOTT.

Q. I believe you have some situation in the Secretary of State's Office?

A. Chief Clerk in the Alien department.

Q. Was you at Maidstone at the trials?

A. Yes.

Q. Do you know the person of Mr. Dennis O'Brien?

A. I do.

Q. Do you recollect seeing Mr. O'Brien in Court

during the time the Jury retired to consider of their verdict ?

A. I do.

Q. Where did you see him? where was he?

A. I saw him near the dock, on the side where Mr. O'Connor stood.

Q. Was he in conversation with any person that you observed?

A. He was in conversation with Mr. O'Connor.

Q. Do you recollect what happened immediately after the Jury had pronounced their verdict?

A. I recollect that Rivett, one of the Bow Street Officers, attempted to get up on the side where the Jailer sat.

Q. Did he declare the purpose of his attempting to go that way?

A. To the best of my recollection, he said, he had a warrant from the Secretary of State to arrest Mr. O'Connor.

Q. Did you observe that any attempt was made to resist this person who was endeavouring to come forward?

A. I observed some persons endeavouring to pull him back.

Q. Do you recollect whether any direction was given to the Jailer with respect to the prisoners, by either of the learned Judges?

A. Yes.

Lord Kenyon. It cannot be necessary to go into that.

Mr. Ershine. There can be no doubt of any of these facts.

Mr. Abbot. Did Mr. O'Connor do any thing?

A. Mr. O'Connor placed, as far as I recollect, his left hand upon the side of the Bar where he stood, and leaped over.

Q. Did you hear any voices crying out any thing?

A. At that time the tumult became general: I heard some cry out, "Stop, stop;" and others, "Run, run."

Q. Are you able to identify any person who was resisting Rivett?

A. I saw a person, to the best of my recollection, who was dressed in a gray coat and a black collar, and his head was bald on the top.

Q. What did you see that person doing?

A. He seemed to have hold of the officer's coat.

Q. Of Rivett's coat?

A. Yes.

Q. Did you afterwards learn who that person was?

A. I afterwards understood that person to be a Captain Browne.

Q. Did that person, after the tumult was over, prefer any complaint to the Court that you recollect?

A. I cannot identify the person of the gentleman that endeavoured to make a complaint to the Court of ill usage; but there was some gentleman upon the table, who complained, whether generally, or

to the Bench, I cannot say, "Am I to be ill-treated in this way?" or to that effect.

Q. Was that the person with a bald head and black collar?

A. I cannot say.

Q. Did you know Mr. Fergusson the Counsel?

A. I have not the honour of Mr. Fergusson's acquaintance; but I had his person pointed out to me as being Mr. Fergusson.

Q. Did you see him do any thing?

A. He appeared to have SOMETHING in his hand; but whether it was a stick or a sword that lay upon the table, or what, I cannot say—but he was brandishing it over the heads of the people.

Q. Was he in his professional dress at this time?

A. He was.

Cross-examined by Mr. ERSKINE.

Q. Where was Mr. Fergusson standing when you apprehend, rather than express, that you saw him brandishing something which you do not describe, but which you think was a stick or a sword?

A. He was standing near the side of the Court upon which Mr. O'Connor stood.

Q. Upon the ground, upon the bench, or upon the table?

A. He appeared to me, as far as I can charge my recollection, to have been upon a bench; he appeared to be elevated from the ground.

Q. This was after the sentence had been pronounced, and after Mr. O'Connor had gone out of the dock?

A. It was about that time, as far as I can recollect.

Q. At the time of the confusion in Court, was it not?

A. It was at the time of the confusion.

JOHN STAFFORD called again.—*Examined by Mr. LAW.*

Q. I will not examine you to the preliminary circumstances which have been proved by several witnesses. Confine yourself now to the time that Mr. O'Connor was endeavouring to get over the Bar. At that period of time, did you see any of the Defendants, and particularly Mr. Fergusson or Lord Thanet, do, or endeavour to do, any thing?

A. At the instant that Mr. O'Connor leaped over the Bar, I saw my Lord Thanet and Mr. Fergusson: I had been paying particular attention to Mr. Justice Buller in passing sentence; and the moment that he was done, I turned my eyes round to the Bar, and saw Mr. O'Connor in the act of getting over; he had his left hand upon the Bar, and his right hand extended: my Lord Thanet stood next to him, to the right of him; Mr. Fergusson, at that instant, was in front of him, with his back to me, facing Mr. O'Connor.

Mr. Erskine. Where did you sit at this time?

A. Supposing this to be the Court at Maidstone, I sat directly under the Jury.

Mr. Law. You sat so that you could observe the whole of the transaction?

A. Clearly; but the whole of the transaction was of that sudden nature, that I was rising part of the time; I rose, and seized one of the sabres which lay upon the table, and which was a part of Mr. O'Connor's baggage.

Q. Did you see Lord Thanet or Mr. Fergusson do any thing in aid of Mr. O'Connor in the act of escaping?

A. When Mr. O'Connor extended his arm, he either laid it upon Lord Thanet's shoulder, or Mr. Fergusson's arm; Lord Thanet being between me and Mr. Fergusson, I could not distinguish on which of them he put his hand.

Q. Did you see any obstruction given by them to any persons in passing from one part of the Court to the other?

A. I did not observe Lord Thanet make any obstruction; Mr. Fergusson had his back turned to that side of the Court from whence the officers were endeavouring to approach to the Bar.

Q. With his back towards the great street of Maidstone?

A. Yes. At the instant I am now speaking of, I was upon the table.

Q. Did you see any thing in particular done by Mr. Fergusson?

A. Mr. Fergusson extended his arms in this manner, seemingly to me to keep the persons back who were forcing themselves forward. I saw no other act done by him.

Q. Then did Mr. Fergusson appear to you to be putting himself in a position to stop the way?

A. Certainly so.

Q. To stop the way for who?

A. I said before, to stop the way of the persons who were approaching that side of the Court where the officers were.

Q. Were any persons at that time attempting to come from the side of the Court where the officers were, to the side where Mr. O'Connor was?

A. Rivett and the Bow Street Officers were. *I at this time stood upon the table with a drawn sabre in my hand.*

Q. Did you see any body, before that, have hold of the flap of Mr. O'Connor's coat?

A. Yes; before Mr. O'Connor got from the Bar, I observed that Mr. Watson the jailor had got hold of the tail of his coat.

Q. Was it at the same period of time when you saw the officers rush forward, and Mr. Fergusson attempt to stop the way in the manner that you have described?

A. Yes; the whole transaction was of the shortest duration possible: *Mr. Fergusson forced himself between Mr. O'Connor and Mr. Watson the jailor; Mr. Watson the jailor reached across; he*

sat on the other side from where Mr. O'Connor the Prisoner sat ; he reached across behind Binns, and seized the flap of O'Connor's coat, as he was getting over the table ; the coat was extended for a small distance between O'Connor and the Bar, and Mr. Fergusson forced himself in between the two, and Mr. Watson let go his hold.

Q. Do I understand you, that by the action of Mr. Fergusson, the Jailer was separated from his prisoner ?

A. That I cannot say : the Jailer might have let go his hold without the action of Mr. Fergusson ; it appeared to me to be in consequence of the action of Mr. Fergusson.

Q. Do you know the person of Mr. O'Brien ?

A. No, I do not ; I saw a gentleman in Court who spoke to Mr. O'Connor two or three times ; that gentleman I had previously seen in the witness's box, standing by Mr. Sheridan, Mr. Fox, and the other gentlemen that were there ; and I saw him afterwards ; but I do not know, of my own knowledge, who he was at all.

Q. You mentioned standing upon the table with this sabre in your hand—did you strike any body, or create any confusion ?

A. I certainly struck no one ; I menaced many that I saw, apparently to me, endeavouring to force Mr. O'Connor out ; I brandished the sabre, and cried out very loudly, "Keep back," and made

motions as if I would strike ; but I did not strike any one.

Q. From the observations you were enabled to make, to what cause and to what efforts did you attribute the riot ?

A. The riot must be attributed, most certainly, to Mr. O'Connor's attempt to escape, and the assistance that his friends gave him. I did not know of any warrant there was to apprehend him, till I heard Rivett call out in the manner I have described, before the sentence was passed.

Q. Did you observe any other circumstances of actual assistance given by the friends of Mr. O'Connor to his escape, besides those you have mentioned ?

A. No ; the transaction was so short, it was impossible to observe minutely.

Cross-examined by Mr. ERSKINE.

Q. This scene of confusion you represent as almost instantaneous, and to have continued but a very short time ?

A. Yes.

Q. You were sitting, as clerk to Mr. Knapp, under the jury-box ?

A. Yes.

Q. And your face, of course, towards the great street of Maidstone ?

A. Yes.

Q. Now, after Mr. Justice Buller had pro-

nounced sentence of death upon O'Coigly, did you see O'Connor jump out of the Bar ?

A. I did.

Q. Where do you mean to represent that you saw Mr. Fergusson at that time ?

A. *Mr. Fergusson did not attract my eye till I was upon the table ; seeing the act of O'Connor, I immediately sprung up.*

Q. You did not see Mr. Fergusson till the confusion had advanced ?

A. It was just at the very instant ; they all happened almost at the same time.

Q. Mr. Fergusson did not attract your attention till you had got upon the table in consequence of that instantaneous confusion having begun ?

A. I got upon the table in consequence of seeing Mr. O'Connor leap over.

Q. Then, when your attention was first attracted to Mr. Fergusson, it was in the midst of the confusion ?

A. Yes.

Q. Several persons appeared to be pressing forward, and there seemed to be a scuffle ?

A. Yes.

Q. You observed Lord Thanet very distinctly ?

A. I had never seen Lord Thanet before that day — I saw him give his evidence — I saw him afterwards, I think, sitting between Mr. Dallas and Mr. Fergusson ; and I think I cannot err, when I say, I am sure it was Lord Thanet.

Q. Did you not see distinctly the person you took to be Lord Thanet?

A. Most distinctly.

Q. How far was he from you?

A. I am sure, not more than two yards; for the space between the table and the Bar is very small; and it was between the table and the Bar that I saw Lord Thanet.

Q. Where the Counsel sat?

A. Not in the seat where the Counsel sat.

Q. At this time you were upon the table, and saw Mr. Fergusson in the midst of the confusion; was he upon the table where you were, or in his place?

A. Neither upon the table, nor in his place.

Q. Where then?

A. Immediately behind where he had formerly sat; he had sat in the front of O'Connor, and he had got just behind the seat where he had sat before.

Q. You had a sword which you brandished for the purpose of keeping off any danger that might happen?

A. Yes.

Q. Do you mean to represent that Mr. Fergusson was at that time in the Solicitors' box?

A. I don't know whether I can call it the Solicitors' box or not; *he sat at the extremity of the seat wherein the Solicitors sat*—he was certainly directly before me at the end of the trial.

Q. At that time, was not Mr. Fergusson sur-

rounded by a great number of people, who were pushing and shoving, and making a disturbance?

A. The persons behind him were certainly crowding upon him; but there was a small space before him that was vacant.

Q. Was there not a pressing upon him every way?

A. No, not from the table.

Q. Were there not persons in the place where the Solicitors' box was, pushing and crowding at the time Mr. Fergusson extended his arms?

A. Certainly; but I saw him only pressed on the side that I describe.

Q. Do you mean to swear that you saw Mr. Fergusson shift his place where he had been, and go nearer to Mr. O'Connor?

A. No, I did not see him shift it.

Mr. Garrow. There was a low-backed seat for the Counsel for the Prisoners?

A. Yes.

Q. Behind that was a space and bench for the Solicitors?

A. Yes.

Q. And if I understand you right, Mr. Fergusson appeared to you to be over that low back to the Counsel's seat?

A. Yes, certainly so.

Q. Between the back of the Counsel's seat and the Bar?

A. Yes; I had not immediately before this observed where Mr. Fergusson was.

The Honourable ROBERT CLIFFORD sworn.—

Examined by Mr. GARROW.

Q. I shall not trouble the Court to hear from you over again the detail of the circumstances. Did you hear Lord Thanet examined as a witness upon the trial of Mr. O'Connor?

A. I did; it was a few minutes before five.

Q. Very soon after that, I believe, Mr. Dallas summed up on the part of the Prisoner?

A. He began to sum up, I believe, about five.

Q. Did you observe where Lord Thanet sat while Mr. Dallas was speaking?

A. Mr. Dallas left his place, which was exactly opposite Mr. Justice Buller, and Lord Thanet came and sat in Mr. Dallas's place.

Q. Mr. Dallas had removed from the place where he had sat, to a more convenient place for addressing the Jury?

A. Yes; to the left hand of the Counsel for the Crown; Lord Thanet sat opposite Mr. Justice Buller; the Attorneys' Bench was between the Prisoner and Lord Thanet.

Q. Did you, at any time after that, see Lord Thanet move from that place, Mr. Dallas's seat, to any other?

A. He went over the back of the seat, and went into the Attorneys' place.

Q. To that seat which was immediately under the Bar?

A. Exactly: I do not know whether it was the first or second seat; there are two seats, one seat is directly against the wood, and then there is the thickness of a man: I do not know which of them he was upon.

Q. When the Jury returned, and had given their verdict, what observations did you make respecting either Lord Thanet, Mr. Fergusson, Mr. O'Brien, Mr. Thompson, or Mr. Browne?

A. When they had returned a verdict of Guilty against O'Coigly, I observed Mr. O'Connor put his left leg over the bar of the dock, I believe they call it, leaning upon his left hand; Lord Thanet rose up, and Mr. O'Connor's hand was within this distance (six or seven inches) of Lord Thanet's left shoulder—it was below his head: I did not see it touch his shoulder, because Mr. Fergusson rose up, and was exactly between Lord Thanet and myself.

Mr. Erskine. Where did you sit?

A. I sat as Marshal under the Jury-box.

Mr. Garrow. Be so good as describe that rising of Mr. Fergusson's.

A. They ran off all together—they followed Mr. O'Connor, as it appeared to me—I bent myself as far as I could to see, when so many people came jumping from the Witness-box, that I was almost over-powered.

Q. The Witness-box was opposite the Jury-box?

A. Yes; and they all went off to the left hand, behind the Cryer's box.

Lord Kenyon. Do you mean that they all ran off together?

A. *Mr. Fergusson and the rest of them went off towards the narrow street of Maidstone.*

Mr. Garrow. There you lost sight of them, on account of the number of persons that came to intercept your view?

A. I was sitting here, and they all went there.

Q. Did you see any thing more of the conduct of Lord Thanet?

A. I saw no more of them after that; I saw a gentleman, that was almost bald, come and complain that he had received a blow upon his head, and asked, "Whether there was no redress for the blow he had received?"

Q. Did you learn afterwards that that was Mr. Gunter Browne?

A. I understood his name was Browne.

Q. Did you see him favouring the escape of O'Connor?

A. No.

Q. Did you see Mr. O'Connor do any thing?

A. I saw a person in a gray coat hanging his left arm over the Jury-box for some time, afterwards came down, and was seated on the right of Mr. O'Connor, upon the Bar that was there. Just before Mr. O'Connor made his escape, that person

disappeared from that place, and I saw no more of him.

THOMAS WAGSTAFFE *sworn.—Examined by Mr. ADAM.*

Q. You are a King's Messenger ?

A. Yes.

Q. You went to Maidstone, in May last, with a warrant to apprehend Mr. O'Connor ?

A. Yes.

Q. Did you go into the Court with Fugion and Rivett for that purpose ?

A. No ; Fugion and Rivett were in the Court before I went in, and I went in to them.

Q. Do you remember any gentleman coming and asking you any questions about your warrant ?

A. Yes ; a gentleman came and asked, if I had a warrant, or any thing against Mr. O'Connor ?—I told him, No.

Q. Did any other gentleman come to you ?

A. No.

Q. Do you know who that gentleman was ?

A. No ; I understood afterwards it was Mr. O'Brien.

Q. Did any thing further pass between you and Mr. O'Brien at that time ?

A. He offered to bet some money with Fugion and Rivett.

Q. Did any thing more pass ?

A. No.

Q. Had you your escutcheon as Messenger on?

A. No.

WILLIAM CUTBUSH *sworn.—Examined by Mr.*
GARROW.

Q. I believe you are a clock-maker at Maidstone?

A. Yes.

Q. Were you in Court at Maidstone when sentence of death was passed upon a Prisoner of the name of O'Coigly?

A. Yes, I was.

Q. Upon that occasion, did you see Mr. O'Conor do any thing?

A. Yes; I saw him get over the Bar.

Q. At that time did you see Lord Thanet? and if you did, what did you see him do?

A. After that, I saw a man with a sword in his hand beating over a gentleman's head.

Q. The Court have been sitting many hours, and have heard the general detail of the transaction; be so good as answer my questions—Did you see Lord Thanet?

A. I did.

Q. Did you see his Lordship do any thing, and what?

A. I saw Rivett strike Lord Thanet over the back—I did not know it was Rivett at that time—I knew Lord Thanet very well.

Q. Where was Lord Thanet at the time that Rivett struck him?

A. Two or three yards from Mr. O'Connor, or thereaway.

Q. Was Lord Thanet nearer to the great street of Maidstone, than he was to Mr. O'Connor, or to the narrow street?

A. They were all on the left side.

Q. You was on the side on which Mr. O'Connor was endeavouring to get out?

A. Yes.

Q. What was the first thing you saw?

A. I saw nothing till I saw the sword hit upon Lord Thanet's back.

Q. That was not Rivett?

A. Yes, it was he hit Lord Thanet upon the back with a sword—I did not know it was Rivett till afterwards.

Q. Were any of the lights put out?

A. One.

Q. Did you hear any expression about putting out the lights?

A. Yes, I heard some person say, "Put out the lights."

— OMROD sworn.—Examined by Mr. ADAM.

Q. I have but one question to ask of you—Did you see any body, at the time of the pronouncing of the verdict at Maidstone, in the case of O'Coigly

and O'Connor, lay hold of Rivett, or any of the officers?

A. Yes; Rivett, Fugion, Wagstaffe, and I, were standing together; they wanted to cross the Court where Mr. O'Connor was.

Q. What was done to Rivett?

A. Two gentlemen in black got up and opposed him very much: I said to one of them, "You must not obstruct this man; he is an officer of justice."

ROBERT PARKER sworn.—*Examined by Mr. GARROW.*

Q. Was you in Court at Maidstone when the Jury returned into Court with their verdict, in the case of O'Connor and others?

A. Yes.

Q. Were you near the Under-sheriff?

A. I was very near—behind him.

Q. Nearest the great street of Maidstone, and far from O'Connor?

A. Yes.

Q. Did you see any thing happen upon that verdict being brought in?

A. Upon the verdict being brought in he put his leg over the Bar, feeling himself discharged, as he afterwards explained; a Bow Street Officer then stepped up and said, "There was a warrant to detain him;" Mr. O'Connor then put his leg back again, and said, "He thought he was discharged;" and one of the Judges said, "He was not to be dis-

" charged," or something of that sort ; and he was quiet till sentence was over.

Q. Did you see Lord Thanet ?

A. Yes ; I saw him on a seat at the front of the Bar ; I am perfectly sure I saw Lord Thanet.

Q. After sentence had passed did you see the Bow Street Officers make any attempt to pass the Bar where Mr. O'Connor stood ?

A. Mr. O'Connor jumped over the Bar, and then the Bow Street Officers both advanced in order to stop Mr. O'Connor ; the Jailer called out, " My " Lord, am I to let him go ?" or something to that effect, and there was a contention ; several persons were assisting Mr. O'Connor to get out at the opposite door, and the Bow Street Officers were attempting to stop him.

Q. Did you at that time see Lord Thanet ?

A. I did.

Q. In what situation ? and what was he doing ?

A. Lord Thanet evidently appeared to me to be obstructing the officers in their attempt to stop Mr. O'Connor.

Q. Did you see any other person engaged in the same attempt ?

A. Not any one whose person I then knew.

Q. Did you observe any person whose dress was remarkable ?

A. I saw a gentleman in a Bar gown and wig endeavouring to assist the escape of O'Connor ;

but at that time I did not know the person of the gentleman.

Q. Do you since know who that gentleman was?

A. I only know by report.

Q. Did you see any other person in a gown and wig acting as you have described?

A. No, I did not.

Q. Had you been in Court during any considerable portion of the trial?

A. No, very little; I had been in, for five minutes at a time, perhaps, three times during the trial.

Q. So that you had not an opportunity of observing that gentleman in the course of his professional duty?

A. No.

Cross-examined by Mr. GIBBS.

Q. You say Lord Thanet appeared to you to be obstructing the officers; did you see him do anything?

A. I saw him resisting with his hands.

Q. Pray, when was this?—before or after the sentence?

A. It began immediately after the sentence; it began upon Mr. O'Connor getting over the Bar.

Q. What did he do with his hands?

A. The Bow Street Officers pushed forward; and against one of them it was that he was making resistance.

Q. Pray, which of them?

A. I cannot tell—I do not know which—I did not know either of them.

Q. Did you see the warrant?

A. Yes; I saw it handed over to be read.

Q. Can you tell whether it was against either of those two men, or against the Messenger, that he was making that resistance?

A. I cannot.

Q. But you saw him put his hand against one man that was coming forward?

A. Yes, certainly.

Q. You said that you saw a gentleman in a Barr-gown that appeared to assist O'Connor.

A. Yes.

Q. What did you see him do?

A. I recollect that gentleman was ranged with the Counsel for the Prisoners; and then he turned round with his face to the Bar, and was in that manner contending to resist their advancing towards the Prisoner.

Q. He was standing upon the ground and reaching over?

A. Yes.

Q. Standing, as I may be standing now, supposing this to be the Bar?

A. Yes: supposing you was turned round, it would be exactly so—he turned round towards the Bar.

End of the Evidence for the Crown.

MR. ERSKINE.

GENTLEMEN OF THE JURY,

It now becomes my duty to address you—but for three of the Defendants only: because, though nothing could possibly have separated their cases in argument, yet it was thought prudent not to embarrass the mind of any one advocate with so many facts and circumstances as the defence of all of them might eventually have involved. My Learned Friends who sit behind me, were, therefore, to have defended the other two Gentlemen; but as they have not been at all affected by any part of the evidence, it may, perhaps, be thought advisable by the Court, that they should *now* be acquitted, lest their testimony should become material hereafter for those who remain under trial.

Several observations were made by the Attorney General, in his short and dispassionate address to you, well worthy of your attention. He told you, that he could not conceive a greater offence against the justice of any country, nor indeed against the very character of Justice itself, than an attempt to confound and overbear its Judges and Ministers in the administration of Law.—I admit it freely. The undisturbed and unruffled course of Justice is the un-

universal source of human security. Statesmen have, in all ages, distracted Governments by their ambition ;—parties will always create animosities, and sometimes confusion, by their discordant interests ;—tumults will occasionally arise out of the best of human passions, in the best-ordered States ;—but where an enlightened and faithful administration of justice exists in any country, that country may be said to be secure.

It has pleased God to give us a long reign of that security in England.—Indeed, if I were to be asked what it is which peculiarly distinguishes this nation from the other nations of the world, I should say that it is in **HER COURTS** she sits above them ; that it is to her judicial system she owes the stability of all her other institutions : her inhabitants have for ages lived contented under her laws, because they have lived in safety.

Gentlemen, the Attorney General had certainly no occasion to enter into any explanation of his own conduct in the course of this prosecution: it was never my purpose to impeach it.—The question is not, whether he is justified in having arraigned the Defendants, but, whether, upon the whole evidence, they are guilty, or not guilty ? I say, upon the *whole* evidence ; because, to secure myself an impartial hearing, I think it my duty to tell you, in this early part of my address to you, that I mean to call witnesses in their defence. You have heard attentively the accusing testimony: **AUDI ALTERAM**

PARTEM. It is not two days ago that, in a similar stage of an important trial, the Noble Judge upon the Bench took occasion to remark to a Jury, that this was so sacred a maxim of justice, that we were frequently reminded of it by seeing it inscribed upon the very walls of our Courts.

It has been also truly observed to you (as the observation applies to the first of the Defendants upon the Record, my noble friend and client, Sackville, Earl of Thanet), that the charge against *him* is of a most deep and serious complexion. I think so too.—He is a man of illustrious rank—a hereditary Judge and Legislator of the kingdom; and a judgment, therefore, against *him*, is of far greater consequence than to a mere private man.—It is a great impeachment of such a person, that he infringes the Constitution of his country, of which he is a dignified guardian; that he disturbs the execution of those laws of which he is a high magistrate; and that, forgetting the duty annexed to his exalted station, the duty of giving the example to the people of order and obedience, he excites them to tumult, and violates even the sanctuary of justice with misrule and violence.—Mr. Fergusson, though inferior in rank to the Noble Earl, stands eventually in a situation, perhaps, of still greater delicacy, and is involved in deeper consequences. The son of a late eminent lawyer in the other part of the island; who filled also a high situation in its magistracy;—himself bred to the English Bar; not as a fashionable

branch of education, or as an useful introduction into life; but engaged in it learnedly, honourably, and successfully, as a profession, and as a profession by which he must live: a young man, so circumstanced, has surely a most serious claim to your attention, and even to the most indulgent consideration. As to the other gentlemen, I need hardly speak of them: because, though their names have of course been reiterated in the questions put to the witnesses, nothing approaching to criminal conduct has been established against them. We are here, therefore, upon a mere question of fact. You cannot but have observed, that the Attorney General and myself, instead of maintaining opposite doctrines, perfectly agree upon the principles which ought to govern your decision. The single object of inquiry is, the truth of this Record. Is the charge proved to your satisfaction? or, rather, *will* it be so proved when the *whole* cause has been heard?

In adverting to what the charge is, I need not have recourse to the abstract I had made of the Information. The substance and common sense of it is this:—that Mr. Arthur O'Connor had been brought, by legal process, into the custody of the Sheriff of Kent; that a Special Commission had assembled at Maidstone, to try *him* and others for high treason; that, upon the opening of the Commission, he had again been committed by the Court to the same custody; that he was afterwards again brought up

to the Bar, and found not guilty; and that, after he was so acquitted, but before he was in *strict form* discharged by the order of the Court, the Defendants conspired together, and attempted to rescue him. This is the essence of the charge:—the disturbance of the Court, and the assaults stated in the different counts of the Information, are only the overt acts charged to have been done, in pursuance of this purpose, to rescue the Prisoner. The *criminal purpose* to rescue Mr. O'Connor, is the fact, therefore, of which you must be convinced, to justify the verdict which the Crown has called upon you to pronounce.

Before I proceed to address myself to you upon the evidence, I will do that which must make it manifest that it is not my wish to confound your understandings in the investigation of facts; for I will begin by relieving your attentions from the consideration of all circumstances that are neither disputed, nor fairly disputable, either as they are the result of what you have heard already, or as I think they must remain when the whole case is before you. I admit, then, that Mr. O'Connor, when he heard the verdict of the Jury in his favour, was disposed to leave the Court: the presumption, indeed, as it arises out of universal practice, as well as out of the law that warrants it, is, that he, as well as others, thought that the verdict of Not Guilty entitled him to do so. Neither can it be disputed that a warrant did in fact exist, and that

its existence was known, since it appears that the officers stated in open Court that they had one: and it is not material for me to dispute, nor is it, perhaps, disputable, that Mr. O'Connor knew of their intention to arrest him; and, if he did know it, human nature is stronger than all the evidence in the world to convince every man of his disposition to escape from it: and I admit further, that a most honourable person, who gave his evidence with a candour which reflects high honour on his character, has added a circumstance which, though it could not be strictly received as proof, may be true, for any thing that touches the merits of the case, *viz.* that there had been a communication to the Court that there were disaffected persons disposed to rescue the Prisoner.

Having admitted these facts, I, in my turn, have a right to bring to your recollection, that it is an indisputable fact, resting upon the whole of the Crown's evidence, that the officers, strongly impressed with this idea, rushed suddenly and impetuously forward, on Mr. O'Connor's stepping over the Bar when the verdict of Not Guilty was delivered: and indeed Rivett, upon his cross-examination, distinctly admitted, that, owing to the apprehension of a rescue, he rushed into Court with more precipitation than under other circumstances he could have justified; and that a great bustle and confusion existed before he approached any of the Defendants, or even saw their persons. This *admitted* origin of

the disturbance removes all difficulties from the consideration of the cause; and Mr. Justice Heath declared, that there was a scene of confusion and violence in Court, such as he had never seen, nor could possibly have expected to see, in a Court of Justice. The single question, therefore, is, *what share the Defendants had in it?* Did the disturbance arise from any original acts of theirs? or were they, on the contrary, first pressed upon by the officers and their assistants, who, though they might be engaged in what they mistakenly supposed to be their duty, from an expectation of resistance, necessarily created confusion by their forcible entry into a crowded Court? Were the Defendants engaged in any conspiracy or combination to deliver Mr. O'Connor? That is the great, or rather the only question; because, if this does not appear from the evidence, all their acts, even if they were ultimately to remain as they appear at present, are perfectly consistent with the conduct of gentlemen suddenly and rudely trampled upon in a tumult, though without, perhaps, being the particular objects of violence by those who created it.

The natural course of considering which of these propositions ought to be adopted by reasonable men, is to set out with tracing a motive. There can be no offence without some corresponding inducement to commit it. It is not alleged that these gentlemen ignorantly or wantonly insulted the Court—an indiscretion which can only happen among the low-

est orders of the people: the charge upon them is a *deliberate* and *pre-existing* combination to deliver Mr. O'Connor, by confusion and force, from a warrant which they knew to be impending; and the acts attempted to be proved upon them can find no place in any reflecting mind, but as they are believed to be the result of such a conspiracy.

Now, I have always understood it to be the great office of a Court of Justice, when evidence is to be opposed to evidence, to consider the probabilities of the transaction: indeed, a judicial decision is nothing else but the bringing up facts to the standard of reason and experience. I have already described the situations of the only two Defendants whose cases you can have occasion to consider;—the one, as a high Peer and Magistrate of the kingdom, with the natural consciousness of the duties inseparable from exalted stations; the other, standing in a manner for his very existence upon the dignity and decency of his deportment in the Courts, which habit, as well as principle, had taught him to reverence and respect. Yet the charge upon such persons is, that open undisguised acts of violence were committed by them, in a place which the Attorney General has, with great propriety, assimilated to the place where we now sit—because nothing more forcibly assists the judgment than bringing the scene under the immediate notice of the senses; and I am, besides, speaking to gentlemen of the county of Kent, who must themselves

know the place without the aid of this comparison, though you cannot know it better than I do. I have spent many laborious hours of my life in the Court at Maidstone; though the labour was always rendered delightful by the reflection that I never had to plead in vain, before Gentlemen of your description, in the cause of innocence or truth. The Attorney General, then, has assimilated the Court of Maidstone to this Court.—He says, that the Prisoner sat where my Learned Friends now sit behind me; that the Bench of the Solicitors, where the confusion began, cannot be better described than by the place occupied by the King's Counsel now sitting around me; the seat of the Counsel may be considered to be placed where these Gentlemen are now sitting before me; and the vacancy in the middle, between the Bench and me at this moment, must be supplied by the table of which we have heard so much; while the Judges *there* must be considered to be placed as they are *here*, elevated in situation as in rank, and commanding the most distinct and immediate view of every part of the Court. Under these circumstances, you are asked to believe that Lord Thanet and Mr. Fergusson—the one possessed of a large hereditary fortune in Kent, and who could not but know that his person was as well known to every man in Maidstone as St. Paul's Church to the inhabitants of Ludgate Hill—the other standing upon a table within six yards of the Judges, in the robes of his profession,

close by a large chandelier, described at that time by all the witnesses to have been fully lighted ;—you are desired, I say, to believe, that these two persons, *without any motive upon earth brought home to them by any part of the evidence*, engaged publicly in a scene of audacious riot and violence, in the public face of the most dignified Court ; in the presence of all its numerous Officers ; of an acute and intelligent Bar ; of the Sheriff and all his train ; of a Jury composed of the principal Gentlemen of the county, and of all that concourse of attendants upon an important State prosecution which either duty or curiosity had collected. I maintain that the history of the world does not furnish an example of such a total departure from every principle of human action, and from all common sense and prudence, in the commission of a crime. The interest of the parties to commit it appears to be nothing—the project utterly impracticable—detection absolutely certain—the reproach, to men of character, severe and inevitable—the legal punishment, not less so ; and all those consequences notorious to men of the meanest and most uncultivated understandings.

Gentlemen, the mind of man cannot avoid collecting and accumulating these absurdities ; but they are too important to be thus run over ; they must be viewed separately, to have their proper effect.

First, then, let us search for a motive strong enough to impel honourable men to encounter such

desperate difficulties, in the pursuit of a dishonourable, useless, and impracticable purpose. Have you any evidence, have you the suggestion, have you even the insinuation of Counsel, that the Defendants ought to be classed amongst those evil-disposed persons, if any such existed, whom Mr. Justice Heath took notice of, but upon report only, as attendant on the trial? The Noble Earl came down, under the process of a subpoena, to give evidence for the Prisoner; not even of any fact connected with his conduct, but merely to state what he knew of Mr. O'Connor as an acquaintance, and what he had collected from others concerning his character in the common intercourse with the world. But why should I seek by observation to remove the imputation of a motive corresponding with the misconduct which is imputed, when it is but common justice to the Attorney General to admit that he did not even attempt to insinuate any thing of the sort? Yet my Noble Friend remains as a criminal before you, charged with the violation of that which is the most sacred in civil society, branded with the resistance of authorities the most dignified and important, in order that a person supposed to be an object of high suspicion by the government of the country, might be left at liberty to perpetrate the treasons which the Duke of Portland's warrant had for its object to defeat—treasons which, if successfully perpetrated, were, in their most direct and obvious consequences, to strip the Noble Earl of all the splendid inheritance

of rank and property descended to him from his ancestors through so many generations. Mr. Fergusson will forgive me if I say, that the principal property which he can die possessed of, must be the fruits of a profession which the same treasons were pointed to destroy ; yet he, too, must be believed, *without a shadow of evidence, or even the suggestion of his accusers*, to have engaged in the desperate effort of affording shelter and opportunity for treasons which were to dissolve the Courts in which he practises, to destroy that system of law which he has been bred to understand, and to set up, instead of it, a new order of things, by which he must descend from the eminence conferred by education and experience, and mix in the common ranks with ignorant and undisciplined competitors.

But, it seems, they were not indifferent to the deliverance of Mr. O'Connor ; for, upon his acquittal, they hastened to the Bar, and congratulated him on the verdict. They certainly did so, in common with many others ; and although the impulse of personal kindness which directed them was honourable, it may be set down, not so much to the individuals, as to the characteristic benevolence of Englishmen. The characteristics of nations depend more upon their histories and their governments, than upon the temperaments of men arising from natural causes. The English constitution was always, in *theory*, a constitution of freedom ; but it only became so in *practice*, by the numerous and finally successful

struggles of our free and virtuous ancestors against oppressive abuses of authority. Many eminent persons to whom this country is indebted for her liberties, having stood upon their trials, and having obtained deliverances from the tribunals of justice, has gradually produced a general sympathy in the minds of Englishmen, when men are standing for life or for death before their country. This is an almost universal, and peculiarly characteristic feature of the inhabitants of Great Britain. It is not confined to the vulgar, as an ignorant and even an immoral prejudice, but pervades all the classes of society. It is compounded of a principle of humanity, of a spirit of national pride and dignity in the freedom of our institutions, and of a sense of security derived from them. No reasoning, therefore, can be more false, than that, when men are accused, and even upon pregnant evidence, of conspiracies against the Government, they who seem to feel an interest in their deliverance are alienated in their affections to the State. Englishmen of all descriptions receive their sense of innocence from their country's verdict ; and they feel a sort of satisfaction which, I verily believe, exists in no other country. Irreligion and false liberty have been seen to delight in blood,—to rejoice in revengeful sacrifices,—to think it music to hear the agonizing groans of expiring sufferers, and a spectacle of triumph to gaze upon their mutilated bodies ; but the sense of liberty in a country long humanized by the influence of a

free government, shrinks back even from the consequences of the justest prosecutions,—looks with an eye of tenderness upon the accused even before the conscience is convinced of innocence, and feels an invincible impulse of pleasure in the legal deliverance from guilt. Long, long, may this remain the characteristic feature of our country ! When Mr. O'Connor, therefore, was pronounced not guilty, was it any proof of a conspiracy to rescue him from other charges, that he was congratulated on his deliverance, which he was not only entitled to by the verdict of the Jury, but which the evidence on the trial, and the Judges' remarks on it, had previously and distinctly anticipated ? The question, therefore, again recurs—Were the Defendants the active authors of the rescue, for the purpose charged in the Indictment ? The **MOTIVE** is gone already—not only as wholly unascrivable from the total absence of evidence, but because my Learned Friend who laid the case before you was too much a man of honour (as I have already done him the justice to acknowledge) to ascribe, or even to insinuate, a motive which he knew did not exist, and which he had neither evidence nor reasonable presumption to support.

If, however, a criminal act, though without the proof, or even the imputation of a referable principle of action, may still be believed by a Jury dispensing the mild and rational justice of this country ; the next consideration, in weighing the probabilities,

is, how this purpose, supposing it still to exist, without any corresponding interest, was possibly to be accomplished?—for men cannot be presumed to engage in the most perilous enterprises, not only without inducement, but without even a shadow of hope or prospect that their object is practicable. The situation of the Court is not only present to your own recollections from your perfect acquaintance with it, but is brought before your eyes by its just comparison with this. Mr. O'Connor stood at the Bar where my Learned Friends now sit, surrounded by hundreds of persons not attempted to be implicated in any design to favour his escape; on the right, and on the left, and behind, were the public streets of Maidstone, from whence no passage without observation was to be expected; and before they could even be approached, an outlet must first have been made through groves of javelins in the hands of those numerous Officers which the exemplary attention of the Sheriffs of Kent has always provided for the security and dignity of the Court. It was, therefore, not merely improbable, but *naturally impossible*, to deliver, or even hope to deliver, a Prisoner from the public Bar of such a Court, in the view of all its Judges, its Counsel, and attendants, without the support of great force and numbers, and without, likewise, a previous concert and combination to direct them with effect. The next consideration, therefore, which directly follows these immutable principles of judgment, is the fact as it

applies to them—Was there either **FORCE** exerted, or **NUMBERS** collected, or **MEASURES CONCERTED**? The Defendants cannot be made responsible for any act of violence which might be committed by any disorderly persons in the street. It is nothing to them, that Mr. Justice Buller's servant was knocked down in one of the avenues of the Court, whilst they were admitted to have been in its centre. What act of disorder or violence do you find committed by Lord Thanet, by Mr. Fergusson, by Mr. O'Brien—or by Mr. Gunter Browne, who has been made a Defendant, only because, without any offence on his part, he appears to have had his head broken! for this gentleman is literally not identified by any part of the proof as having been even in Court at all, except as he was seen complaining to the Judges of an assault committed on himself. Lord Thanet is a man of high spirit, and of a strong body; it must have been a warm interest, as I have repeatedly observed to you, that could have embarked him at all in such a business; and, when embarked in it, he must reasonably be supposed to have engaged with activity in the accomplishment of an object for which he risked so much; yet it has appeared already, by the testimony of one of the most respectable and the most correct of all the witnesses for the Crown, and it will be made manifest hereafter beyond all doubt or question, that, at the very moment (and it was but a moment) when the evidence has the remotest application to any of the Defendants, he lay back

inactively, holding his stick with both hands across his body, to defend himself from the assaults of only one man, not stronger than himself, and whose blows he neither attempted to return, nor invited the aid of others to repel; so far from it, that Mr. Fergusson, who is supposed to have put his character and situation to so much hazard, though he stood close by, is not even charged with having exerted his strength on the occasion, but to have contented himself with flourishing a small stick in his hand without striking or aiming at any body—a circumstance neither true, nor possibly consistent with the truth of the designs which are imputed to him; and no act of violence, or even gesture to incite it, is imputed to any other person near this supposed focus of confusion, at the only time when Lord Thanet and Mr. Fergusson are affected even by the solitary evidence of Rivett. So much for the force exerted in the pursuit of a purpose which no force proceeding from a few persons could have accomplished; and as to any previous concert or combination amongst numbers which can possibly involve them, it is rendered absolutely incredible by the whole body of the evidence; for the Attorney General has proved that there were attendant on Court a great number of gentlemen known to profess the same principles and opinions with the Defendants, and most intimately acquainted with Lord Thanet in private life—gentlemen who, I have no doubt, are here at this moment assembled by the

just anxiety of friendship and affection ; yet it is not imputed to any of those numbers I allude to, though all present in Court, and within reach of whatever was transacted in it, that they took any part, directly or indirectly, by force, by speech, or by seeming encouragement, in the scene of disorder which took place. If Lord Thanet, then, is a conspirator, *with whom* did he conspire ? since, with the exception of the four other Defendants, three of whom must be acquitted for want of evidence, accusation itself does not even attempt to implicate one man of his numerous friends and acquaintance, who must naturally be supposed to have been impressed with similar feelings, nor indeed any one man, high or low, whom he can be proved to have ever spoken to, or seen, in the whole course of his existence ; and if obscure and unknown persons are to be taken to have been instruments in this confusion, there must have been some evidence of direction or encouragement to others proceeding from the Defendants, which is not attempted to be sworn by any of the witnesses. This most important part of the case shall not, however, be left upon the failure of evidence, or even upon the absence of accusation ; for I will call many of those gentlemen, who will tell you that they were wholly ignorant of any design to rescue the Prisoner—that they saw no confusion or riot, except that which the precipitate entry of the Officers occasioned ; and who, by tracing the Defendants in their eyes through the whole of

the period in question, will be able positively to contradict the most material parts of the evidence which personally affects them.

Gentlemen, the next question upon the score of probability is this: supposing that, contrary to every thing either proved or asserted, the Defendants *had* felt an interest in the escape of Mr. O'Connor, and *had* conceived it to be *practicable*, could they possibly have hoped to escape detection—more especially Lord Thanet and Mr. Fergusson, whose persons were so notorious—the one, from his high rank and residence in the county whose principal inhabitants surrounded him; and the other, from being in his professional dress, in the place assigned to him as Counsel on the trial, and, in the very midst of his companions, engaged in the business of the Court? Lord Thanet, therefore, and Mr. Fergusson, upon the Attorney General's own admission, who has justly assimilated the Court at Maidstone to the one we are now assembled in, could no more have hoped to escape immediate detection and punishment for the riot they are supposed to have engaged in, than I could hope to escape from them, if, taking a strong interest, as I must be supposed to do, in the acquittal of my clients, and thinking there was no safety for them but by making such a confusion in Court as to prevent your hearing the evidence, or the Judge's observations on it, I should, when I had finished my address to you, and the Judge was beginning to sum up to you, publicly begin or join in

a scene of noise and uproar, *under the eyes of the Judges, as they now look at me*—of the Officers, now sitting before me—of you, the Jury, to whom I am speaking—of my numerous friends at the Bar, whose honour is connected with the dignity of the Court—and of the whole crowd of spectators, hundreds of whom I am known to personally, and all of whom are acquainted with my person.

Gentlemen, I can observe, from the absurdity and impossibility of the case I am putting, that I seem to be trifling with the subject; but that sensation, which I have no doubt is general, and which I cannot help even feeling myself, displays the irresistible force of the actual case before you; because I defy the wit, or wisdom, or imagination, of man, to attempt even a shadow of a distinction between the case I have put to you and that of Mr. Fergusson:—for, why should *he* be supposed, any more than *myself*, who am the object of comparison, to have embarked in this impracticable project of disgrace, dishonour, and injustice; in the dress of Counsel, as much as I am, on the trial which engaged the Court; and in a place, the exact similarity of which to the room that holds us is no assertion of mine, but a fact so unalterably established by the whole evidence as to be employed by both sides as an assistant to the mind in judging of the accuracy and consistency of the proof?

The next recourse to probability, if your judgments, as in all other cases, are to be governed by

reason and experience, is, if possible, still more unanswerable and decisive.

Supposing the Defendants, *without interest or motive, and without the possibility of success, and without even a chance of escaping from detection and punishment*, to have, nevertheless, publicly insulted and disturbed the Court by acts of disorder and violence, WHO MUST HAVE BEEN THE WITNESSES TO SUCH A SCENE? Who, for instance, must have been the witnesses, if Mr. Fergusson, as has been asserted, had stood upon the 'able of the Court—the table round which the Counsel are ranged, directly under the eyes of the Judges and the Jury; and had flourished a stick round his head, to favour the escape of the Prisoner, by preventing the Officers from approaching him;—*who, I say again, must have been the witnesses to such a phenomenon?*—who, amongst the Judges, or Counsel, or Officers, or spectators, but must have seen it?—who, that had seen it, could possibly have forgotten it?—and who, that remembered it, could have hung back from the proof of such inexcusable misconduct? Yet the proof of this fact, to which the whole Court must have been, as it were, but one eye, and an eye of indignation, is not supported by any one person, either upon the Bench, or at the Bar, or amongst the numerous Officers of the Court. On the contrary, we shall see, by and by, the difference between the testimony of a reverend Judge of England, and that of a Bow Street Officer, when I come

to advert to the evidence of Mr. Justice Heath, which is directly and positively inconsistent with Rivett's, on whose single and unsupported testimony this extravagant and incredible part of the case is alone supported.

But, it seems, they have given judgment against themselves, by their demeanour and expressions upon the occasion. Lord Thanet, it seems, said to Mr. Justice Lawrence, as Mr. Abbot expressed it, who did not hear what the Learned Judge had said, to which Lord Thanet's words were an answer, "that it was fair he should have a run for it;"—words which cannot be tortured into any other meaning, more especially when addressed to one of the Judges of the Court, than that, speaking in extenuation of Mr. O'Connor's conduct, who had visibly made an effort to escape, he thought it fair that a person so circumstanced should have a run for it, if he could; a sentiment which, by the by, no man in his senses would have uttered, more especially in such a quarter, if he had felt himself at all implica'ed in a criminal endeavour to assist him; and if Lord Thanet did not speak at this moment with all that complacency which in general so much distinguishes him, nor offer, as Mr. Sheridan did, his assistance to the Judges, it is not at all to be wondered at; for it must be recollect'd that he had just suffered in his person, not as you have it upon the evidence at present, but had been most roughly and severely assaulted. Mr. Justice Buller is proved

to have said, that Mr. Sheridan conducted himself in a manner greatly to his satisfaction ; but the very contrast which this evidence is introduced to furnish, instead of operating against Lord Thanet, is an additional argument in his favour. Lord Thanet and Mr. Sheridan are as one man in every thing which relates to public opinions, and friends in private life. Upon what principle, then, can it be made out that Mr. Sheridan should be assisting the Judge, whilst Lord Thanet, who had no connexion with Mr. O'Connor which did not equally belong to the other, should be behaving like a madman, unsupported by any of his friends or acquaintances, who were attending as witnesses upon the trial ? But the time of this conversation, if I had before adverted to it, would have rendered all these observations wholly unnecessary ; for it was *after* the riot (as it indeed must have been), that Mr. Justice Lawrence conversed with Lord Thanet, saying to him, amongst other things, “ that he hoped Mr. O'Connor's “ friends would advise him to submit to his situation.” Now I may safely assert, that, high as Lord Thanet's rank is, that Learned Judge would not have spoken to him as a person from whom he solicited and expected assistance, if he had himself observed him, or if he had known him to have been observed by others, disturbing the order of the Court. On the contrary, if there had been a reasonable ground for impeaching Lord Thanet's conduct, the Learned Judge would have executed the

law upon him:—he would have attached him for his contempt; and surely no person in Court had a better opportunity of observing every thing that passed in it. Mr. Justice Lawrence was one of the youngest of the Learned Judges who presided at the trial, with stronger health than belonged to all of them, which enabled him to keep up his attention, and to observe with acuteness; he was, besides, deeply interested in whatever concerned the honour of the Court; and the elevation of the Bench on which he sat gave him a full view of every person within it. Indeed, Lord Thanet, at the time this misdemeanor is imputed to him, was directly before him, and under him, and not farther from him than Lord Kenyon at this moment is from me. I have, therefore, a right to say, that not only nothing is to be presumed against Lord Thanet from what he said, but that, on the contrary, a strong presumption arises in his favour when we hear the evidence from any other mouth than that of the Learned Judge himself; since, if *he to whom the discourse was addressed*, and who was the best judge of the fair construction to be put upon it, had considered it in the light it has been represented and relied on, he might have been called as a witness. Mr. Justice Heath and Mr. Serjeant Shepherd, the Judges in the same Commission, were examined to matters infinitely less material.

Gentlemen, let us now pause a little, to consider the effect which I feel myself entitled to derive from

these observations.—I consider myself to have advanced no farther in the argument than this—

First, That there was no assigned nor assignable motive for the criminal purpose charged by the Indictment.

Secondly, That it was a purpose palpably impracticable, and which, therefore, no reasonable men could possibly have engaged in with any prospect of success.

Thirdly, That whatever might have been the probable issue of such an enterprise, detection and punishment were certain.

Fourthly, That, admitting the evidence you have heard to be free from all errors, the Defendants did not conduct themselves like men engaged in such a pursuit, nor appear to have been supported in a manner reasonably, or even possibly, consistent with the alleged conspiracy.

Fifthly, That, although the witnesses against them, if the transaction had been justly represented, must probably have been the greater part of the Court, and certainly all that part of it elevated both by situation and authority above the rest; yet that there has been not only no such concurrence of testimony against the Defendants, but, on the contrary, the most correct and respectable witnesses have concurred in destroying the remainder of the proof.

Sixthly, That the expressions imputed to Lord Thanet cannot possibly affect him, without supposing

that he publicly gave evidence against himself, even to one of the Judges, who, upon the evidence of his own senses, had authority to have punished him upon the spot.

Lastly, That it appears, by the whole body of the proof, that the confusion arose when the Officers burst with improper and indecent precipitation into Court; that it began and ended almost in the same breath; and that, during the short moment of its continuance, there was such a scene of tumult and confusion as to render it impossible for the most attentive observer to give any clear and distinct accounts of the transaction.

If these conclusions, Gentlemen, be the unavoidable result of the Crown's evidence when brought to the common standard of man's reason and experience, it appears to me that you are bound to return a verdict for all the Defendants, even if I should call no witnesses; because, to justify a verdict of *Guilty*, it is not enough to collect from the evidence that the Defendants *may* be guilty, or *probably* are guilty—*No*;—their innocence must be quite incompatible with the fair result of the whole proof; for, if two different conclusions may be reasonably drawn from the same state of facts, you are bound in justice to adopt the one which is supported by the greater number of probabilities. Now, if this plain rule of judgment be not wholly departed from, and even trampled under foot, I take upon me to say positively and firmly, because I am making my appeal

to men of understanding and liberal education, that the evidence for the Crown, without any at all on my part to oppose it, taking it all together, and considering the fair result of it, is not sufficient to convict any of the Defendants. This proposition, however, cannot be supported by general observations, nor by that general appeal to the proof which I have been engaged in ; it must be examined accurately in the detail. I shrink from no part of it. I will sum it up to you as if I spoke to you from the Bench ; and I pledge myself to make out, to the satisfaction of every unprejudiced mind, that all that I have hitherto said to you, though absolutely necessary by way of introduction, has suffered from its *generality* ; and that the *particulars* of the proof will illustrate and confirm, beyond all question, every proposition of fact, and every principle of judgment, which I have already brought before you.

The first witness examined for the Crown is Mr. Serjeant Shepherd, who was joined with the Judges in the Special Commission. This examination is highly important in every part of it ; because, when it becomes necessary to compare the evidence of different witnesses in order to arrive at a safe conclusion from the whole, nothing can be so satisfactory as to find some person on whose testimony the judgment may repose with safety. My Learned Friend (as all who know him must have anticipated) delivered his evidence with the greatest clearness and precision, and in a manner most dispassionate ; and

when you recollect, besides, that he is a man of singular ability, and that, from his elevated situation in the Court, he had the best opportunity of observing every thing that passed, you cannot fail to pay greater attention to his testimony, and to that of Mr. Justice Heath, who immediately followed him, than to any other witnesses, however respectable.

In bringing before you Mr. Serjeant Shepherd's evidence, I will not trouble you with that part of it which went to facts which are now no longer disputed, but will take it up from the time when the Jury returned into Court. Mr. Serjeant Shepherd says, "*Lord Thanet was standing before the Bar at which the Prisoners stood, with his face turned towards the Court; he was rather to the right hand of Mr. O'Connor, nearest to the great street of Maidstone where the Gaoler sat.*" Speaking of Mr. O'Brien, he said, that "*he stood in the same line, but rather to the left of Mr. O'Connor; that something had been before said by the Bow Street Officers, who were making a noise, and had been desired to be quiet. When the verdict of Not Guilty was delivered, some persons (but whom, I know not) said, 'Then they are discharged; and somebody at the table replied, 'No, they are not discharged.'*" And here I have no objection, that what Mr. Serjeant Shepherd omitted may be filled up by Mr. Solicitor General's evidence, and that the answer from the table was to Mr. Fergusson, who,

on hearing the verdict pronounced, had said the Prisoner was discharged ; he said it, however, before the Court had declared the law upon the subject ; as Counsel for the Prisoners, it was natural he should be interested in their deliverance ; and he is not indicted for having mistaken the effect of the law, but for having conspired to obstruct the Court in administering it. The Attorney General said, very properly, “ I bring the Defendants before you, “ not for considering the Prisoners discharged by “ the verdict, but for an attempt to rescue them “ by violence and tumult, after the Court had de-“ clared that they were in custody.”—“ *At this* “ *time,*” continued the Learned Serjeant, “ *Mr.* “ *Justice Buller said to the Gaoler, ‘ Put the other* “ *Prisoners back, and let O’Coigly stand forward ;* “ *when one of the Bow Street Officers stood up on a* “ *form, and said he had a warrant against Mr.* “ *O’Connor.*” This, you observe, was the first time there was any mention of a warrant in Court ; so that what had before fallen from Mr. Fergusson was merely his sudden idea of the effect of the verdict of Not Guilty at the moment it was pronounced, and which, at all events, must, in a few minutes afterwards, have delivered the Prisoner ; and there is no evidence whatever, that, at the time he said so, a fresh custody was a matter of apprehension or contemplation.—“ *Whilst Mr. Justice Buller was* “ *passing sentence, my attention,*” continued Mr. Serjeant Shepherd, “ *was directed to O’Coigly ; and*

"when he had finished, I observed Mr. O'Brien turn round, and look at Mr. O'Connor, and, immediately afterwards, look down with a very slight motion and inclination of his head." And here, Gentlemen, it is impossible not to admire that delicate sense of justice which no man possesses more than my Learned Friend the Serjeant, and which dictated to him the remarkable reserve which accompanied this part of his evidence. He recollects that a witness is not to put himself in the place of a Jury, by drawing *his own* conclusions from his own testimony; but accurately to state what he hears and sees, and to leave the conclusion to those whose province it is to decide. He therefore, with the utmost propriety, forbore from expressing what appeared to him to be Mr. O'Brien's purpose; but said to you, "*I rather choose to describe his gesture;*" which he accordingly did. This fact, therefore, delivered with the restraint which the integrity and understanding of the witness so properly suggested, affords no evidence whatever of evil design in Mr. O'Brien, much less of concert or combination with the other Defendants; and indeed the proceedings of this very day have afforded an instance, how dangerous it would be for the most sagacious persons to collect, from gestures only, what passes in the mind of another.—When Lord Romney, not choosing to advance in his evidence beyond what his memory with certainty suggested, declined giving a farther answer to a question put to him, the Noble

and Learned Chief Justice interposed, and put the question to him again. I admit that it was his duty to do so—but his Lordship will forgive me if I say, and I appeal to his honour for the truth of it, that he was convinced at the moment, not only that I thought the *direct contrary*, but that I had publicly and rudely expressed a sensation of dissatisfaction; since, looking at me very significantly, his Lordship told me that it was *his duty* to repeat the question. Nevertheless, I do declare upon my honour, and I appeal to Mr. Gibbs, to whom I was speaking at the moment on quite a different subject, *that no such idea was passing in my mind as my gestures were supposed to have expressed*; yet no man is a more acute observer of human nature than his Lordship; and nobody, certainly, was ever better acquainted with my countenance. **SO MUCH FOR GESTURES.** It is, indeed, strongly in Mr. O'Brien's favour, that at the moment he looked down, as described by the witness, he could not be acting in concert with Lord Thanet; for Serjeant Shepherd saw Lord Thanet *at the very same moment*, and swore that he was standing with his face to the Court, and that he never changed his position. The Serjeant added, that “*when the last word of the sentence was pronounced, Mr. O'Connor jumped with his left foot upon the Bar, and his left hand upon the shoulder of Mr. O'Brien*,” but who does not appear to have held out his hand to assist him. Mr. O'Brien, on the contrary, though he could not have but con-

tinued in view for some time longer, is charged with *no one act whatsoever*; and it would be strange indeed to convict a gentleman of a rescue, because, standing near a Prisoner meditating an escape, he had laid his hand upon his shoulder. But this part of the case will be put quite at rest hereafter; because Mr. O'Brien is perfectly well known to several gentlemen of distinction, present in Court at the time, and not at all implicated in the riot, who will all tell you that they saw him distinctly, and that he was not concerned in any violence or disturbance whatsoever. I am not, however, called upon to do this, because there is literally no proof to be answered.

The remainder of Serjeant Shepherd's evidence, as it applies to Lord Thanet, is so absolutely decisive, that you will be driven to pronounce by your verdict, whether you give credit to this most respectable and observing witness, or to a Bow Street Officer, who was himself the author of the confusion; for the Serjeant added, that "*when Mr. O'Connor had jumped over the Bar, and he had lost sight of him, the Officers rushed into Court to arrest him, and a great noise ensued; and AT THIS TIME (GENTLEMEN, THE TIME IS MOST MATERIAL AND CRITICAL, BECAUSE IT CAN APPLY TO NO OTHER THAN THE PRECISE TIME SWORN TO BY RIVETT), "I saw Lord Thanet," said the Serjeant, "standing as I have described him, with both his hands over his head,"*"—which he also de-

scribed to you by putting himself in the same defensive posture, as far more expressive of his situation than any words could communicate. This, I say, is the single point of time to be looked at ; for the remainder of the Serjeant's original evidence, applying to a subsequent period, described a scene of great confusion, in which he said he could discover nothing distinctly ; that many persons were upon the table, some asking questions, and others endeavouring to restore order. It is not, therefore, at *this* period that you are to look, since no part of the evidence at all applies to it ; but at the moment when Lord Thanet is alone affected by Rivett's evidence, the Serjeant's testimony has a direct and decisive application ; for, upon his cross-examination, he said in so many words, “ *I never saw Lord Thanet look round, or change his position as I have before described it, till the very instant the Officers rushed into Court ; and THEN I saw him with his stick, held as I before described it ; but I am BOUND to say, that he appeared to me to be acting on the DEFENSIVE WHOLLY.* ” This concluding evidence is an exculpation of Lord Thanet, and must have been so intended. I did not even put the question to the witness ; he himself conscientiously added, that he was **BOUND** (bound, of course, in justice to Lord Thanet, who was accused of *active violence*) to say, that he appeared to be only acting **IN HIS OWN DEFENCE**. Now, Gentlemen, there can be neither honour, nor advantage,

nor security, bestowed upon the administration of government or justice, which this prosecution is avowedly instituted to support, if men can be punished, not merely upon doubtful evidence, but upon evidence which directly contradicts the charge. That a Court of Justice must not be insulted, or even disturbed, is a proposition which must be acceded to by every man acquainted with the first elements of civil life—that a charge of such a high misdemeanor well justifies the solemnity of a trial in this place, is another proposition which cannot be disputed—but the heinousness of offences, and the necessity of suppressing them by punishment, does not alter the quality of the proofs by which they are to be established; on the contrary, it was pleasant to attend to the just reserve in that respect with which the Attorney General laid the case before you; he stated his own evidence in general terms, but without commenting upon it, or enforcing it; reserving his observations till the evidence on both sides should be heard; but we are not even engaged at present in balancing contradictory evidence, but in showing that the accusing evidence is in itself defective, and even exculpatory.

Mr. Serjeant Shepherd was properly selected as the first witness for the Crown. He sat, from his station as Judge, in an elevated position, where he had a better opportunity of observing than others; and he accordingly appears to have observed every thing which passed; yet, instead of fastening guilt

on Lord Thanet, he sees him, from the time the Jury returned into Court, standing in one position ; not looking round as if he was watching the motions of Mr. O'Connor, or engaged with others in attending to them ; not even looking towards the side of the Court from whence the arrest was to proceed, but upwards to the Judges ; not opposing his body as an obstacle in a narrow passage through which the Officers were to pass ; not presenting a front to them which a man of his strength, with the intentions imputed to him, must naturally have been expected to do ; but standing, as any other person attentive to the trial, till the Officers, apprehending a rescue, rushed with violence into Court, and pressed upon and assaulted him ; for, had he not been pressed upon and assaulted, he could not have been seen by Serjeant Shepherd in a posture of defence ; and if he was first active in obstructing and assaulting Rivett, in the manner which he, and he only, has sworn to, why should not Serjeant Shepherd have seen it ? since his eye was so constantly fixed upon Lord Thanet, from the time the Jury returned with their verdict till the confusion became general, which is subsequent to the period of Rivett's evidence, as to enable him to tell you that he did not shift his position, nor make a gesture or motion, till the Officers and others rushed in upon him ; and *then*, *i. e.* immediately, at the same moment to which alone the evidence has any application, he sees Lord Thanet with a stick over his

head, which he thinks himself bound to express, and even to *describe* to you as a passive posture of defence. This evidence, which so completely exculpates Lord Thanet, is not less applicable to Mr. Fergusson; for if he, who is placed by all the witnesses as standing close by him, had been an active conspirator, armed with a stick, which he was flourishing over the heads of the Officers, can you possibly suppose that he would have withheld his assistance from Lord Thanet, who was visibly overpowered; or that a man of Lord Thanet's strength, though assisted by Mr. Fergusson, who is above six feet high, and a young man of great activity and strength, should be perfectly passive under the blows of Rivett, endeavouring only to save his person from violence, without retaliation, or even a motion to the accomplishment of his object?

The evidence of Rivett is farther exposed, by his having denied that Lord Thanet had a stick—a fact established beyond all question; and by his swearing that he took the stick from Mr. Fergusson, and struck him with it—when it will appear by and by that he took it from behind his own coat when he assaulted Lord Thanet. This last fact, however, I ought to have passed over at present, because it arises out of my own evidence, which I do not wish at all to mix with my observations on the case of the Crown.

Gentlemen, the other Judges, with the exception of Mr. Justice Heath (whose testimony will also

support the innocence of the Defendants), have not been examined, though their positions in Court were so highly favourable: neither has the Bar been examined, who, if Lord Thanet had been in the situation which some of the witnesses have described, must have all seen it to a man; and their not having been called, affords a strong inference that their evidence would not have been favourable.

Mr. Hussey, who was next examined, said, “*I saw Mr. O’Connor attempt to get over the Bar*” (a fact never disputed); “*and at that time Lord Thanet was standing with his back to the Prisoners. I saw somebody pressing forward, who said he had a warrant; but I saw no paper. Lord Thanet SEEMED to press himself towards the Bar, and SEEMED TO BE DESIROUS to interrupt his progress.*” I dare say, the Rev. Mr. Hussey meant to tell you what he saw; but he has expressed nothing. What can be collected from such expressions?—Can you convict any man upon evidence which imputes *no act*, but only a *seeming desirousness*? Lord Thanet SEEMED to press himself towards the Bar, and *seemed* to be desirous of interrupting the Officer’s progress.—Did the witness SEE him do the one, or the other?—If he had, he would of course have *so expressed* it; and if Lord Thanet had actually done *so*, why should not Mr. Serjeant Shepherd have equally seen it, who observed him accurately *at the very same moment*? The

same answer was given by the last witness, Mr. Parker; and from which one might have been desired also to conclude that Lord Thanet was an active rioter:—He *SEEMED* to be encouraging—But what did he do when he *SEEMED* to be encouraging? He put his hand *so!*—What then? If I am not proved to be in combination or concert with any one, nor to have myself committed any act of violence, is riot or disorder to be imputed to me, only because, in the midst of a scene of uproar, I appear to be irritated from a sense of danger, or from insults which I have received? If, indeed, a person could not account for his presence in a scene of riot, the case might be different: the presumption might *then* supply the defect of actual proof. If people were engaged in the destruction of a house, or in the commission of any other violence, and I was seen bustling or making gestures in the midst of them, my very presence might be evidence against me: “How came you there, Mr. Erskine,” might be the question, “at a distance from your own house, and in the middle of the night?” But these presumptions have here no application; for Lord Thanet was attending as a witness under the process of the Court, and is described by one of the Learned Judges as standing originally in his proper place, and not changing his position. The whole of Mr. Hussey’s evidence, therefore, amounts only to this—that Lord Thanet *SEEMED* to press forward, and that, too, *at the very same moment* when

Mr. Serjeant Shepherd described him as unmoved and motionless, with his back to the Prisoner, and his face, of course, towards the Court.

Gentlemen, I feel that it must be painful to you to be obliged to attend to these minute observations ; but it is a solemn duty imposed upon me to point out every fact and circumstance of the proof, by which you are sworn to regulate your verdict ; the sameness and repetition are nauseous ; but that is the very strength of the Defendants' case, because it shows the concurrence of the testimony which acquits them. How, indeed, can one expect variety in the discussion of a transaction which, all the witnesses say, was like a flash of lightning, beginning on a sudden, when, from the apprehension of a rescue, the Officers rushed into Court, and ending (as far as the evidence goes) in the confusion which almost immediately followed ; leaving only for your decision, whether, if, in such a crowd, it happens that I am rudely pressed upon, I am a criminal for defending myself ? and whether, if, in the midst of such a scene of confusion, some of my postures or gestures are not understood by others who see me, and who may be unacquainted with what has happened to me, I am to be convicted of a crime which not only affects my property, but my personal liberty, and, what is still dearer to me, my personal honour and reputation ?

Lord Romney is the next witness, whose evidence was just what might have been expected from a person

in his situation—highly interested in the honour of the county where he has great hereditary estates and honours, where he has important duties to perform, and where, owing a particular attention to the King's Court, he felt, no doubt, a corresponding anxiety that it should suffer no disgrace nor interruption in its proceedings. He was placed, besides, in that part of the Court where he was entitled by his rank to sit, from whence he had an opportunity of observing what was transacting. Thus circumstanced, he says, “*I saw the Bow Street Officers FORCING “a passage, AND STRIKING BLOWS:—whom they “struck I do not know; there was a sword brandishing on the table. Thinking things bore a serious “aspect, I crossed the table, and saw the Prisoner “escaping; he was brought back by the javelin-men. “I said to them, ‘Form yourselves round the Prisoner, for he is not yet discharged.’ I was told afterwards I had said ‘he was not acquitted’: I believe “Mr. Fergusson said so: I have no doubt I made “the mistake.*”—Gentlemen, undoubtedly Lord Romney meant only to say that Mr. O'Connor was not discharged; though the answer was not made to him by Mr. Fergusson—for I shall call the gentleman himself who answered him; not that it is in the least material, except that it proves that Mr. Fergusson was noticed at that time by Lord Romney; and surely, Gentlemen, if he had been acting like the fool and madman, and, I will add, like the knave he has been represented to you—if, in his

professional dress, he had been publicly flourishing a stick upon the table, Lord Romney, who was close by him, must inevitably have observed him ; yet his Lordship does not speak of him as out of his place, or as engaged in any act of disorder or violence. Another most important fact is established by Lord Romney's evidence : for, though his Lordship said that he should have been so much hurt if the county had been disgraced, that his attention was not directed to individuals, and that in the confusion he could not tell who had been struck in the passage by the Officers, yet he added, that **VERY MANY** *blows were struck, and MANY persons hurt* ; yet Rivett says, that Fugion struck no blows ; that Adams struck no blows ; that the Messenger struck none ; nor he himself any but those which were struck at Lord Thanet. Rivett, therefore, according to his own account, was the only person engaged, and successfully engaged, against the rioters ; yet you are desired to believe that a large combination of strong and active conspirators were favouring an escape by violence. This is quite impossible ; and the blows, therefore, which were observed by Lord Romney, were the blows which the *Officers themselves* wantonly inflicted ; since it will appear hereafter, by witnesses whom the Court cannot but respect, and whose evidence cannot be reasonably rejected, that they rushed in like madmen, striking with violence the most harmless and inoffensive persons, which compelled others to put themselves into

that passive posture of defence that Lord Thanet has been so frequently and so distinctly described in. There is nothing more that is material in Lord Romney's examination. Something was alluded to respecting a conversation with Mr. Justice Lawrence ; but his Lordship, with the greatest propriety, not choosing to advance beyond his most perfect recollection, did not particularize it ;—nor could it be material ; for, besides that it appears to be supplied by other evidence, if it had been of any importance, Mr. Justice Lawrence himself would no doubt have been called as a witness. For my own part, I think it extremely likely that it has been already correctly represented :—Lord Thanet, smarting under the blows he had received, did not probably exhibit the same courtesy with Mr. Sheridan ; but I have already observed to you, that this circumstance gives me another important witness—no other than Mr. Sheridan himself, whose deportment was thus remarked and approved of ; for, besides that it is impossible to ascribe a criminal motive, either from public opinion, or acquaintance with the Prisoner, which did not apply as much to the one as to the other, Mr. Sheridan will tell you, upon his solemn oath, that he observed all that passed ; and he will be able most distinctly to exculpate both Mr. Fergusson and Lord Thanet from every part of the charge.

Gentlemen, I will now state to you the Solicitor General's evidence. He says, “ *I kept my eye fixed on “ Mr. O'Connor.—When the Jury gave their verdict,*

“ *I observed him and Mr. Fergusson; I particularly fixed my eyes upon them. I observed Mr. Fergusson speaking to Mr. O'Connor, and Mr. O'Connor put his leg over the Bar: I called out, ‘ Stop him !’ Mr. Fergusson said, ‘ He is discharged.’ I answered, ‘ He is not discharged.’ Mr. Fergusson then said to Mr. O'Connor, ‘ You ARE discharged.’ I repeated, ‘ He is not discharged.’ I observed the Jailor lean over, and lay hold of Mr. O'Connor: some person was at this time pressing forward, and Mr. Fergusson complained to the Court. The Officer was pressing into Court, in order to get round to Mr. O'Connor.*”—Now, Gentlemen, it is fit just to pause here a little, to consider this part of the evidence. The time filled by it is not above two or three minutes—for it is only the interval occupied by the sentence upon O'Coigly; and if a combination had existed between Lord Thanet and Mr. Fergusson, and other persons in the secret, is it probable that Mr. Fergusson would have made himself the conspicuous figure which I am supposing the evidence truly to represent him to have done? His conduct, besides, appears quite different, from Rivett's account of it. Did he enter into private resistance or altercation? No:—he made a regular and public motion to the Court; the Judge yielded to the suggestion—the Officers were directed to stand back for the present, and then the sentence was pronounced. This is not the natural deportment of a person engaged in a conspi-

racy: nothing but the purity of Mr. Fergusson's intentions, and the unconsciousness of offence, could have induced him to put himself so publicly forward by a regular motion to the Court; and such a conduct is surely very inconsistent with that of a person who was meditating at the moment to carry his point by violence, in the teeth of the Court which he addressed.—The Solicitor General further said, "*Rivett, the Officer, said he had a warrant against Mr. O'Connor. Mr. Justice Buller spoke to the Officers, commanded silence, and proceeded to pass sentence. When the sentence was finished, I observed Mr. Fergusson, and some other persons whom I did not know, ENCOURAGING Mr. O'Connor to go over the Bar.*"—Here we must pause again.—Mr. Gibbs asked the witness, upon his cross-examination, "*Did you hear him say any thing? Did you see him do any thing?*"—The Solicitor General proved no one thing which Mr. Fergusson said or did. I am sure I mean nothing in the least disrespectful to the Learned Gentleman; but it certainly did not occur to him at the moment, that it is not the office of a witness to pronounce by his own evidence that a man *encourages* or *supports*,—but he is to depose what he heard him *say*, or saw him *do*—from whence the *Jury* are to draw the inference which is fit. I really mean no sort of reflection;—perhaps it arose from the habits of the Court of Chancery, whose practice is different from ours, and where the depositions are of a very general

nature ; but suppose the Solicitor were to die whilst I am speaking to you, and that, though you should be satisfied as to all the rest of the evidence, you wished to have it explained *with precision* what was intended to be conveyed, when it was said Mr. Fergusson was ~~ENCOURAGING~~, would you condemn Mr. Fergusson upon that evidence, without knowing distinctly what act he had committed ? Could you convict a fellow-subject upon the general evidence that he *encouraged* mischief, without knowing *what he did* ? Certainly not ;—you must hear the *fact* ; and it is then for *you*, and for *you only*, when you have heard it, to draw your own conclusion. The Noble and Learned Lord, with whom we in a manner spend our lives in this place, is in the constant course of saying to witnesses, “ Tell us “ what was *done*, and we will judge of its quality.” By these observations I am not impeaching the evidence of the Solicitor General,—I am commenting as a lawyer upon the result of it ; and I do say, as a lawyer, that it is giving no evidence at all, to swear that a man encouraged, or *appeared* to be encouraging, without stating the *facts* on which that impression of his mind was founded —Mr. Solicitor General went on to say, “ *I did not see Mr. O’Connor till he was brought back by the Officers* : “ *for at the instant that Mr. O’Connor jumped over the Bar, three or four persons leaped from the witnesses’ box upon the table, and mixed among the rioters* ; *all the lights, except those before the*

“ Judges, and the chandeliers, were extinguished.
“ Mr. Fergusson, at the moment Mr. O’Connor
“ jumped over the Bar, turned round, and APPEARED
“ to follow Mr. O’Connor; BUT I WILL NOT PO-
“ SITIVELY SWEAR IT.” I am very glad, Gentlemen, that he did not; because it would have been unpleasant to swear that positively which will be positively contradicted—by those, too, who are of as good faith, and who had as good an opportunity of observing. It is a mere misapprehension; and I would say to the Solicitor General, if I were to see him at his own table or at mine, *that he is mistaken*.—Indeed, in a scene of confusion, no man can tell what he sees with any certainty or precision, and images are frequently confounded in the memory.—The Solicitor General then said, *that Mr. Stafford jumped upon the table, and drew a sword*; and, speaking of Lord Thanet, he said, *he went across the table, and that he saw him in conversation with Mr. Justice Lawrence*, the particulars of which he did not hear; *but that, when he went across the table again, he said he thought it fair he should have a run for it*: *he said it rather in a tone of anger, in consequence of what had fallen from Mr. Justice Lawrence*. Gentlemen, this last part of the evidence applies to a point of time when the disturbance was at an end—after every thing had passed in the presence and observation of the Court—after the disturbance had given manifest and just offence to the Judges, and after they had declared that their pro-

ceedings had been interrupted, and their authority insulted: you cannot, therefore, believe, that, under such circumstances, when Lord Thanet could not but know that high offence had been given to the justice of the county, he should come voluntarily forward, in the hearing of the King's Judges, and confess himself to be an accomplice in a high misdemeanor. These observations are not made to induce you to believe, that Lord Thanet's expressions have been misrepresented to you; but to convince you, that the making them at the time, and to the persons to whom they were made, arose from a consciousness that he had no share in assisting Mr. O'Connor: any other construction of the expression would amount to the confession of a crime, of the magnitude of which Lord Thanet could not, from his education and knowledge, be ignorant;—a crime which is, perhaps, put by the Attorney General in a very modest shape on this record; for, without meaning to moot the point of law, I am not quite sure, that rescuing a person from a warrant for high treason, though impending, and not actually executed, is not felony at the least. The right of Mr. O'Connor to deliver himself from such a warrant, if he could escape before it was executed on his person, was an opinion which Lord Thanet might correctly or incorrectly entertain; but to enhance the confession of such an opinion into an admission of the crime *in himself*, is contrary to every human principle and feeling, and, therefore, not a reasonable

conclusion of human judgment.—Gentlemen, these are my observations upon the evidence of the Solicitor General, as it affects Lord Thanet; and, as it applies to Mr. Fergusson, it is very important; for if Mr. Fergusson had been flourishing a stick in the manner which has been falsely sworn against him, what should have induced the Solicitor General to say, only in general terms, that he saw him *encouraging*?—Will any of my Learned Friends maintain, that if the Solicitor General could have proved in terms, that Mr. Fergusson had a stick in his hand till it was wrested from him by the Officers in repelling violence by violence, that he would not have *distinctly stated it*? It is not, indeed, asserted, that the Solicitor General meant to convey that meaning by the term *encouraging* which he employed; nor is it possible that the Attorney General should not have stated a fact so material in his opening, if he had known he could establish it from the mouth of a gentleman placed in so respectable a station in the world.

Gentlemen, Mr. Justice Heath was next examined; and there is no part of the proof more important, particularly as it affects Mr. Fergusson, than the evidence of that very learned, and, I must add, that truly honourable witness, who was one of the Judges in the Commission, and presiding at the trial. He said, that “*a Messenger from the Secretary of State had applied to the Court for liberty to execute a warrant upon Mr. O'Connor*;—that

"permission had been accordingly granted." So that Mr. O'Connor was not to be ultimately liberated, but was to remain amenable to the process in the hands of the Officers:—that, *"after the verdict had been given, and the sentence pronounced, the Messenger, VERY UNADVISEDLY, went to the corner most removed from the door, and said aloud, 'My Lord, may I now execute my warrant?'* Presently afterwards, I saw Mr. O'Connor put one leg over the Bar, and draw it back again." I have already reminded you, Gentlemen, that at this time there was a doubt in the minds of some as to the effect of the verdict to liberate the Prisoner; and I admit that Mr. O'Connor, when he put his leg over the Bar, knew of the existence of the warrant, and intended to evade it. Mr. Justice Heath then said, *"A violent riot and fighting took place, such as I never before saw in a Court of Justice. It seemed to me to be between the constables on one hand, and those who favoured the escape of the Prisoner on the other."* This shows plainly that Rivett did not speak the truth, when he said that the blows were all on the side of the rioters against the Officers; whereas the fray, as described by Mr. Justice Heath, arose at first from the activity, if not the violence, of the Officers; which I will confirm hereafter by the most respectable testimony. *"It being dark,"* continued the Learned Judge, *"I could not see the numbers of the combatants; but I think there must have been ten or twenty engaged."*

“ in it. I saw Mr. Stafford brandishing a sword over their heads. The combat might last for five or six minutes. I saw Mr. Fergusson, in his professional dress, standing upon the table with many others. He turned round, and said, ‘ My Lord, the constables are the persons to blame: it is they that are the occasion of the disturbance.’ Before I could give him an answer, he turned round towards the combatants; and then my attention was drawn FROM HIM to the more interesting scene of the fight.”—Every part of this evidence is a decisive exculpation of Mr. Fergusson. WHEN was it that Mr. Justice Heath saw him upon the table?—I answer, at the very moment, nay at the *only* moment when blame is attempted to be imputed to him.—By whom was he thus observed?—Not by a common person, unqualified to judge, or uninterested in the order of the Court, but by one of its highest and most intelligent magistrates. It appears further, that at the moment Mr. Fergusson publicly, and in the proper quarter, imputed blame to the Officers (I do not mean such blame as should subject them to punishment, because they might be acting in the supposed discharge of their duty, but blame as it occasioned the disturbance), he did not endeavour to conceal his person from the Judges at this only period of imputed disorder, but regularly addressed the Court in the dress of his profession, and openly complained of the authors of the confusion. It is therefore quite impossible, upon Mr.

Justice Heath's evidence, to mix Mr. Fergusson with violence; for the Learned Judge distinctly stated, that after having *seen* and *heard* him as he described him to you, he observed him *no longer*, his attention being drawn from him to "*the more interesting scene of the fight.*" Is not this a most positive declaration of Mr. Justice Heath, that the place where Mr. Fergusson stood, was *not* the scene of the fight, and that he was not personally engaged in it? for he turned his eyes *from* him to *the scene of the combat*, and of course to the persons of the combatants; whereas, if Mr. Fergusson, with a person so remarkable, and in the dress of his profession, had been *himself* a rioter, the Learned Judge must have pursued *him* with his eyes instead of losing sight of him, and must have seen him more distinctly. But the truly honourable Judge does not leave the exculpation of Mr. Fergusson to any reasoning of mine, having concluded his evidence with these remarkable words: "*I must do him the justice to say, that in the short time I saw him, which was not above a minute or two, I did not see him do, or hear him say, any thing to encourage the riot. I thought myself in great danger, and all of us also.*" This testimony, Gentlemen, is ABSOLUTELY CONCLUSIVE. He saw, indeed, Mr. Fergusson for but a minute or two; yet it is the only period to which the evidence against him has any reasonable application: it was not a riot of long duration, in which a man might

be guilty at one part of it, though not at another; it was almost momentary; and the whole of the scene within the observation of any one spectator. When we consider, therefore, that this learned and reverend person stood in the same situation which the first witness who was examined for the Crown—that he had an opportunity, from his situation in Court, of seeing every thing which belonged to the scene of combat, as he termed it—and when he nevertheless so separated Mr. Fergusson from it as to feel himself *compelled* to say what he did in the close of his testimony—we ought to give to *his* words a weight beyond the voice of a thousand witnesses. A Judge can have no interest in such a subject; and you cannot justly appreciate such a testimony, without taking into your consideration his excellent character, his long experience in the world, and the deep regard which he cannot but feel for the faithful administration of justice.

Gentlemen, it is impossible for me to know how these observations affect you. Self-complacency (too common among mankind) frequently makes false estimates of the effects of argument upon others, by measuring them with the results of one's own understanding; an infirmity which frequently leads us to repose upon them as finished and conclusive, when the most material parts belonging to them have been omitted. This, perhaps, may be my own case at this moment; but it does strike me, I confess (accustomed as I am to the proceedings of

Courts of Justice), that I should be perfectly safe in now leaving in your hands the honours and characters of my Clients, even if I had not a witness to bring before you in their defence: indeed, I have studiously avoided all consideration of my own evidence, in my remarks upon the case of the Crown; in every thing that I have said, I have wished you to consider that I had none at all to offer; and when I reminded you, in the preface of my address, that I had witnesses to bring before you, it was rather addressed to the Court than to you, and rather directed to secure attention to my observations, than arising from any resolution to trouble you with hearing them. Nothing that I have hitherto advanced has been built upon any new fact to be introduced by me; I have been dissolving the evidence of the Crown by its own weakness; I have been insisting that the respectable body of it is the strongest proof for the Defendants, and that its only inconsistency is to be found where it affects them with guilt.

The next witness was Mr. Abbott, a gentleman at the Bar. “ *He saw Mr. O’Connor make a motion to leave the Court, and heard Mr. Fergusson say he was discharged. Mr. Solicitor General answered, that he was not discharged; and then either Rivett or Fugion said he had a warrant; there was then a little confusion; but the Prisoners resumed their places, and Mr. Justice Buller proceeded to pass sentence on O’Coigly. When that was finished, Mr. O’Connor leaped over the Bar towards his left*

"hand; a great tumult and confusion took place."—
No part of all this, Gentlemen, was ever disputed.—*"I saw Lord Thanet on the table nearly before Mr. Justice Lawrence."* This is also nothing. If Lord Thanet mixed in the riot, it could not be near Mr. Justice Lawrence, but in the other part of the Court, where the Prisoners were placed.—*"The Learned Judge spoke to Lord Thanet, and said it would be an act of kindness in Mr. O'Connor's friends to advise him to go quietly to prison, lest some mischief should happen. Lord Thanet then turned round, and said—I did not distinctly hear the first words, but the concluding words were, 'TO HAVE A RUN FOR IT,' or 'FAIR TO HAVE A RUN FOR IT.'*" Gentlemen, I will not weary you with a long repetition of the same observations. I have observed more than once already, that if Mr. Justice Lawrence had considered Lord Thanet as having done any thing to promote the riot, he would have acted accordingly; and it would be, therefore, trifling with your time and patience to detain you farther with Mr. Abbott's testimony.

Gentlemen, we are now arrived at Mr. Rivett; and, retaining in your minds the testimony of the Crown's most respectable witness, on which I have been so long observing, I shall leave you to judge for yourselves, whether it be possible that what he says can be the truth, independently of the positive contradiction it will receive hereafter. Indeed, the evidence of this man administers a most important

caution to juries, not to place too implicit a confidence in what is sworn with positiveness, but to found their judgments upon the most probable result from the whole body of the proof.

Rivett says, "*I saw a gentleman, whom I was told was Mr. Thompson, and I have never seen him since. He asked me what business I had there, and if there was any thing against Mr. O'Connor?*"—evidently meaning a warrant, as he afterwards explained it. I need not, however, pursue this part of his evidence, because he did not identify Mr. Thompson, though he sat before him in Court, but pointed to another person. I pass on, therefore, to that part where he described the state of the Court: "*Many gentlemen,*" he said, "*were seated upon the Solicitors' bench,*" which has been already described to you as immediately before the Prisoners, and without the Counsel's seat, in which Lord Thanet appears to have sat till he stept into that of the Solicitors, where he was heard to speak to Mr. O'Connor, and congratulate him on his acquittal. It was in this place, and before and after this time, that Mr. Serjeant Shepherd described him as standing unmoved, with his face to the Court, and his back to the Prisoners:—Rivett went on to say, "*When the Jury were coming in, I endeavoured to go nigh to the Gaoler, when I was pulled down by the leg; and as soon as I turned round, I saw Mr. Thompson,*" who turns out not to have been Mr. Thompson. "*I thought Mr. O'Connor looked*

“ as if he intended an escape. At that time there was a noise and violence ; and Mr. Fergusson said to the Court, ‘ What business has this fellow here, making a noise ? ’ ” Now, Gentlemen, this cannot be a correct statement as it respects Mr. Fergusson, since it has been sworn by all the Crown’s most respectable witnesses, that he made it a regular motion from the Bar, and the Officers were desired to stand back. *“ I told his Lordship, I had a warrant from the Duke of Portland to arrest Mr. O’Connor ; and the Judge said I should have him, and desired the Gaoler to take care of the Prisoners for the present. The sentence was then passed on O’Coigly ; and as soon as it was finished, Mr. O’Connor immediately jumped out from the Bar ; there was then a great confusion in Court ; the gentleman who sat before me got up ; Mr. O’Connor took to the left, and I called out to shut the door. I endeavoured to get forward, but was prevented by those gentlemen who had placed themselves before me and the other Officers. I was pulled and shoved down two or three times ; but by whom I know not. I jumped forward as well as I was able, and was endeavouring to pursue Mr. O’Connor, when Mr. Fergusson jumped on the table, and with a stick flourished it in this way, to stop me. Mr. Fergusson was in his gown. I sprang at him, and wrenched the stick out of his hand ; and then he returned from the table, and went to his seat.”* I will not pause

at this part of the evidence as it applies to Mr. Fergusson, but pursue it as it goes on to Lord Thanet; because, if I can show you that its application to him is demonstratively false when compared with the rest of the Crown's evidence, on which it must lean for support, it will destroy all its credit as it implicates Mr. Fergusson also. He says, "*I was then knocked down by a person who pushed at me with both hands, and I immediately struck that person three or four blows.*" You will here be so good, Gentlemen, as to consult your notes, as I wish to be correct in stating his evidence. Will your Lordships have the goodness to see how you have got it?

[*Lord Kenyon and Mr. Justice Lawrence referred to their notes.*]

Lord Kenyon. I have it, "I struck him with my stick."

Mr. Erskine. Gentlemen, you will now see, by the observations I am about to make upon this part of the evidence, that I could have no interest in stating it incorrectly; because, whichever way you take it, it involves a direct and palpable contradiction; but there is nothing like the truth, and it is always the best course to appeal to the authority of the Court. His words were, "*He shoved me with both hands;*" and, in his cross-examination, he afterwards described it, "*I struck that person three or four blows: he called out, 'Do not strike me any more;'* I replied, '*I will; how dare you*

“*strike me?*” You observe that he describes Lord Thanet as having no stick, and as having struck him: whereas Mr. Serjeant Shepherd saw Lord Thanet, at what must necessarily be the same point of time, standing with his face to the Judges, and his back to the Prisoners, motionless, as I have repeatedly described him, till he must have received violence from some other person, since the Serjeant saw him leaning back, and DEFENDING himself with a stick which he held in both hands over his head—an account, which, if any corroboration of such a witness could be necessary, I will establish by eight gentlemen who were present, and who will add, besides, in contradiction of Rivett, that Lord Thanet was himself beat severely, and never struck the Officer with either fist or stick. That Lord Thanet *had a stick*, is beyond all controversy: and, having one, is it likely that a man of his strength and activity, engaged in such an enterprise, would only push at his opponent with his *hands*, or that Mr. Fergusson, who is charged as being an accomplice, would have contented himself with flourishing a little stick over his head?

Mr. Attorney General. I do not find that Rivett has at all said that Lord Thanet had a stick.

Mr. Erskine. I have been reading his original examination. I will state his cross-examination by and by, and then set both of them against the truth. He says farther, and to which I desire your most particular attention, “*I saw Mr. Fergusson flourish-*

*"ing a stick about the middle of the table. I went
"that way, to avoid the persons who had stopped
"up the passage. He endeavoured to prevent me ;
"but I wrenched it from him, and struck him. I
"HAD NOT THEN SEEN LORD THANET."*" Now, Gentlemen, I have only to beg that you will have the goodness to make some mark upon the margin of your notes of this fact, which the witness has had the audacity and wickedness to swear to. I use these severe expressions which I have applied to no other witness in the cause, because I never wantonly employ epithets that are unjust. He was in such a situation that he cannot be mistaken in what he swears ; neither does he qualify it with his belief : but takes upon himself to marshal the proceedings in his memory, and to affirm POSITIVELY both as to persons and times. Yet I will prove Mr. Fergusson to have been within the Bar in his place when Rivett speaks of him as on the table, and CERTAINLY WITHOUT A STICK. I will prove this—not by Bow Street Officers, but by gentlemen as honourable as any who have been examined. Mr. Rivett told you too, *"that he came along from the
"great street where the Star Inn is, towards the
"Prisoner, to arrest him ; but that he went to the
"table to avoid the gentlemen who interrupted him
"in his passage towards him."* Lord Thanet is one whom he positively fixed on as having done so. Lord Thanet then interrupted him in his passage to the Prisoner, which induced him to go to the table,

where he had the conflict with Mr. Fergusson; and yet, according to his own deliberate declaration, he never saw Lord Thanet till *after* the stick had been flourished by Mr. Fergusson over his head, and till after he had wrenched it out of his hand; for *then it was*, and for the *first* time, that he swears to have seen Lord Thanet. This is totally inconsistent, not only with the whole course of the evidence, but even with his own. And I will prove, besides, by a gentleman who sat next his Lordship, Mr. George Smith, the son of a late Chairman of the East India Company, a gentleman at the Bar, and of independent fortune, that one of the first things Rivett did when he came into Court, was to press rudely upon **HIM**; and that Lord Thanet, without having struck a blow, or offered any resistance, was attacked by these men in a most furious manner; which accounts for the attitude of defence in which he has been so often described.

No embarrassment or confusion can possibly attend the consideration of time; because, from the evidence of Mr. Serjeant Shepherd, there could be no interval. It was all in a moment. He saw Lord Thanet sitting down; he rose, and stood with his face to the Judges; and then the confusion began. But, at this time, I engage to prove most positively by many witnesses, that Mr. Fergusson was in his place at the Bar, that he was forced upon the table in consequence of the tumult *after Lord Thanet had been knocked down*, and that he had **NO STICK**.

This, indeed, is incontestably established by the evidence of Mr. Justice Heath, who saw him in that situation till he removed his eyes from him to the scene of confusion, which he could not possibly have done if the confusion had not become general whilst Mr. Fergusson remained in his place ; and so far was he from seeking to mix himself with the riot which the Officers were occasioning, that when Sir Francis Burdett, a gentleman possessed both of strength and spirit (if a rescue had been the object), was coming hastily across the table, from seeing the situation Lord Thanet was placed in, Mr. Fergusson, knowing that it would only tend to embroil instead of abating the confusion, took hold of him to prevent him, carried him bodily towards the Judges, desired the Officers to be quiet, and, addressing the Court, said publicly, and in his place, “ My Lord, it is the Officers who are making all this disturbance.”

What, then, is to be said for this Mr. Rivett, who swore that he never saw Lord Thanet till *after* his conflict with Mr. Fergusson on the table, although Mr. Fergusson will appear to have at this time been in his place ? Mr. Smith was as near Lord Thanet as I am now, when Rivett rushed by him, and attacked him, Mr. Fergusson being still in his station at the Bar.

Gentlemen, he said farther, in his cross-examination, that “ *he struck Lord Thanet several blows ; that Lord Thanet desired him to desist, but that*

“he had struck him once or twice afterwards.” This was after Mr. Fergusson had gone across towards the Judges; so that the scene he describes, as relative to Lord Thanet, is not immediately upon his first coming into Court, but afterwards, when, having gone out of his course towards the Prisoner from the resistance he had met with in the passage towards him, he was obstructed by Mr. Fergusson at the table: whereas all the witnesses agree in placing Lord Thanet in the Solicitors' box, the very passage which Rivett states himself to have left in consequence of resistance; and, therefore, he must have passed Lord Thanet, in the Solicitors' box, *before* he could have approached Mr. Fergusson at the table; and if he met with any blows or interruption from him at all, he must have met with them *immediately upon his entering the Court*; for Mr. Serjeant Shepherd's evidence establishes, that at that period violence must have been used on Lord Thanet, as he was in an attitude of *defence*. Rivett further said, that *“Lord Thanet had nothing to defend himself against his blows,”* though Serjeant Shepherd saw and described him with a stick; and that *“he saw no blows struck by any body but himself.”* What, then, is the case, as it stands upon Rivett's evidence? That no blows were struck but his own; though a Learned Judge has sworn to having seen many struck, and upon many persons; that he received no blows from Mr. Thompson—none from Mr. O'Brien—none from Mr. Fergusson

—none from any of the Defendants but Lord Thanet, nor from any other person in the Court. It is for you to say, Gentlemen, whether this statement be possibly consistent with a wide-spread conspiracy to rescue a Prisoner by violence, of which the Defendants were at the head.

Sir Edward Knatchbull saw no blow given to Rivett. He said, “*I can by no means speak positively; but it appeared to me, that when somebody was endeavouring to keep Rivett back, HE struck Lord Thanet with his fist. I saw no blow given to Rivett.*” So that Sir Edward Knatchbull’s evidence, instead of confirming Rivett’s story, mainly and importantly contradicts it.

Mr. Watson, the Gaoler, was next examined. He remembers the directions given him, not to discharge the Prisoner, which I will not detain you with; and says, that “*after sentence was passed, some person said to Mr. O’Connor, ‘You are acquitted—What do you stand there for?—Why don’t you jump over?’ that Mr. O’Connor answered, ‘Mr. Watson says I am not to go;’ but that, immediately afterwards, he sprang over,*” &c.—Thomas Adams, who was then Mr. Justice Buller’s coachman, “*saw Lord Thanet with a stick in his hand, and saw it lifted up.*” We had got rid of that stick upon Rivett’s evidence, and now it comes back upon us again when it is convenient to have it lifted up. He describes the stick as lifted up in this position (*imitating the witness*); whereas

it could be in no such posture, as you must be convinced of from the observations I have already made to you ; but this man's evidence is very material in this respect, *viz.* that in describing the assault of Rivett on Lord Thanet, he says, “ *I heard Lord Thanet say to him, ‘ What do you strike me for ? I HAVE NOT STRUCK YOU :’*”—an expression of great importance in the mouth of such a person as Lord Thanet ; and falling from him at the very moment when it could have proceeded from nothing but consciousness ; and an expression that I will confirm his having used by several of my own witnesses.

Mr. Brooks, who was next called, says, he “ *saw Mr. O'Connor when the Jury returned. Mr. Ferguson held a sword or stick over the heads of the people.*” A sword, or something else, given to us in this confused manner, adds no force to the evidence ; more especially when, upon being asked if he can swear with positiveness, he admits that he cannot.

Mr. Stafford was then examined, who says, “ *he sat under the Jury-box, and could see Lord Thanet distinctly.*” I particularly asked him that question, and how far distant he was from him : he answered me, “ *Not above two yards from me—three times nearer than I am to you.*” He saw Lord Thanet, then, distinctly, at two yards distance, and from the beginning to the end of the confusion ; yet he swears, “ *He did not observe him engaged in any*

“*obstruction.*” Afterwards, when the tumult became general, this witness has been described as brandishing a drawn sword—no doubt, from a sudden apprehension of danger, and to avert it from that quarter. Now, suppose Mr. Stafford had come down, out of mere curiosity, to Maidstone, to hear the trial, and had been seen flourishing this drawn sword in the midst of the affray—what should have prevented Mr. Rivett from considering this gentleman as the greatest rioter of them all? Why might he not the rather have represented him as brandishing it to favour the escape of the Prisoner? One cannot, indeed, imagine a case of greater cruelty and injustice; but what could have been his protection, if Mr. Fergusson can be convicted on the evidence you have heard? Was not his situation in Court, as Counsel at the Bar, equally respectable as that of the Clerk of the Arraigns? and is not the presumption of an evil design against the dignity of the Court equally removed from both of them? Yet the one is only described as flourishing a small stick; whilst the other was so wielding his metallic tractor, that if he had not pleaded a flat bar to the assize in the manner he conducted this falchion, the issue must have been blood. Mr. Garrow said to him at the moment, “Take care that you do no ‘mischief;’” and undoubtedly Mr. Stafford neither did nor intended any; but that makes the stronger for my argument, and shows how little is to be built upon appearances which grow out of a scene of

tumult. The case for your consideration seems, therefore, to be reduced to this—Whether you will believe the two Learned Judges, and the other respectable witnesses? or, whether you will depend upon the single and unsupported evidence by which violence has been imputed? Mr. Stafford, who was within two yards of Lord Thanet, has completely acquitted him: for had he been in the situation in which Rivett has placed him, what could possibly have prevented him from seeing it? It was also sworn by Rivett, that Mr. Fergusson had a stick; but upon appealing to Mr. Stafford's evidence, who sat just opposite to him, we find that he had none; but that *he extended his arms seemingly to prevent persons approaching that side of the Court.* Mr. Stafford admits, that when he saw Mr. Fergusson, it was in the midst of confusion; and it would be a harsh conclusion indeed, that Mr. Fergusson is guilty of the conspiracy charged on this record, because, upon being forced out of his seat by the tumult which surrounded him, as I will show you he was by several witnesses, he had extended his arms in the manner you have heard. Mr. Stafford added, that the Gaoler had hold of Mr. O'Connor's coat; that Mr. Fergusson forced himself between them, and that the Gaoler stretched his hand behind Binns to take hold of the Prisoner. This must be a mistake; for Watson sat as where my Learned Friend Mr. Wood is at present (*pointing to him*), and Mr. O'Connor stood as where Mr.

Raine is now sitting (*pointing to him*) ; and at no part of the time is it even asserted that Mr. Fer-gusson was in the box of the Solicitors, and consequently it was utterly impossible that he could have prevented the Gaoler from keeping hold of the coat of the Prisoner.

Mr. Clifford says, he sat near the Marshal. I thought he had said that he sat there as Marshal ; and, not knowing the person of the honourable Gentleman, I thought he had been the Marshal of the Court. There was no new fact introduced by this witness.

Next came Mr. Cutbush. My Learned Friends appeared to be soon tired of his evidence ; and it seemed to produce an emotion of surprise upon the Bench, that a witness, in such a stage of the cause, should give such extraordinary testimony. He said, “ *I saw Lord Thanet ; he was two or three yards from Mr. O'Connor. I observed nothing particular till I saw Rivett striking Lord Thanet on the back with a sword.* ” Now, as it is admitted on all hands that no such thing ever happened, it affords another instance of the difficulty with which Juries can collect any evidence to be relied on in a scene of uproar and confusion.

The evidence of the last witness, Mr. Parker, contains nothing which I need detain you with.

Gentlemen, I have now faithfully brought before you all that is material or relevant in the case of the Crown ; and having accompanied this statement with

the observations which appeared to me to apply to it, let me suppose that my task was finished ; that I had nothing by which I could farther defend my Clients ; and that I were now to leave you to the Attorney General's reply, and the assistance of the Court. Were this my situation, I should sit down confident that you could not pronounce a verdict against them, upon such equivocal evidence, either honourable to yourselves, or beneficial to your country. I will not tire your patience by an extended recapitulation of arguments which you have heard already with so much patience and attention ; but I feel it to be my duty just to point out the inadequacy of the testimony.

The charge against the Defendants is, a conspiracy to rescue Mr. O'Connor from legal custody, by tumult and violence ;—all the other acts, as they are put upon the record, and brought before you by evidence, being no otherwise relevant nor credible than as the means employed to effectuate that criminal purpose. Your belief of that purpose can therefore be the only foundation of a righteous verdict. Yet not only no part of the proof applies to establish it, but the existence of it is negatived by every principle which can guide the human judgment. No motive, either built upon fact, or flowing from reasonable presumption, has appeared : none has even been suggested : the object, thus pursued without an interest, was palpably useless and impracticable—detection and punishment inevi-

table—the crime, if committed, committed before the whole Court, its Judges and Officers; yet the evidence of it painfully and lamely extracted from a few, and that few overborne by the testimony of the most respectable witnesses, best situated to observe, and best qualified to judge of what was passing. I have therefore no more to ask of you, Gentlemen, than a very short audience, while I bring before you the Defendants' evidence.—My case is this:

It stands admitted, that the confusion had not begun when the Jury returned with their verdict—that there was only a motion towards it when the Officers were directed by the Court to be silent, and to stand back. The period, therefore, to be attended to, is the conclusion of the sentence on O'Coigly, when the Officers, from their own account of the transaction, believing that Mr. O'Connor intended to escape from them, and giving them credit that such intention could not be frustrated without some violence and precipitation, rushed suddenly through the Solicitors' box, where they met indeed with resistance, but a resistance which was the natural consequence of their own impetuosity, and not the result of any conspiracy to resist the execution of the warrant.

To establish this truth with positive certainty (if indeed it is not already manifest from the whole body of the proof), I shall produce, as my first witness, Mr. George Smith, whom I before named

to you, and who was one of the first persons in their way on their entering the Court. He sat as near Lord Thanet as I now stand to where his Lordship sits before you, and who, upon the principle of this prosecution, should, above all others, have been made a Defendant ; for he will admit freely, that he endeavoured to push them from him with his elbow, when they pressed upon him with great and sudden violence : he will tell you, that at this time Mr. Fergusson was in his place at the Bar ; that Lord Thanet was in the place where Serjeant Shepherd described him ; that he was violently struck, without having given the smallest provocation, without having made any motion, directly or indirectly, towards the rescue of the Prisoner, or even looked round at that time to the quarter where he stood : that Lord Thanet, in order to escape from this unprovoked violence, so far from approaching Mr. O'Connor, endeavoured to get nearer where the Counsel sat, when Rivett, instead of advancing straight forward in pursuit of his object, which was to arrest the Prisoner, levelled repeated blows at him, as he was obliged himself to admit, while Lord Thanet lay back in the manner which has been so often described to you, protecting his head from the blows he was receiving.

In the same seat was Mr. Bainbridge, a gentleman educating for the Bar, a near relation of the Duke of St. Albans, and a pupil, I believe, of my Honourable and Learned Friend, Mr. Wood ; a

person who cannot reasonably be suspected of giving false testimony, to encourage violence and outrage against the laws of his country. Mr. Bainbridge will swear positively, that, when the Officers came forward, Lord Thanet was in the Solicitors' box, and Mr. Fergusson in his place at the Bar, where he remained till the witness saw him forced out of his place, and obliged to stand upon the table, *and that he had no stick.* What then becomes of Rivett's evidence, who swore he never saw Lord Thanet till *after* this period, although it is admitted that it must have been by the tumult, in which he falsely implicated his Lordship, that Mr. Fergusson was driven out of his place? This is absolutely decisive of the case:—for it will appear farther, that Mr. Fergusson continued in his place after the period when Lord Thanet was seen defending himself. It was rather insinuated, than sworn to distinctly, that there were gentlemen coming from the other end of the Court, as if to lend their assistance; but this operates directly in exculpation of Mr. Fergusson, who prevented Sir Francis Burdett from approaching to that quarter of the Court. Sir Francis was certainly not advancing for the purpose of riot, but to extricate Lord Thanet: yet Mr. Fergusson, lest it should add to the confusion, publicly prevented him, under the eye of the whole Court.

The next witness I shall produce to you will be Mr. Charles Warren, son of the late highly cele-

brated physician—a most honourable young man, and who, I verily believe, will be as great an ornament to our profession, as his father was to his. Mr. Warren was placed at the table, attending in his gown as Counsel, and had the most undeniable opportunity of seeing Mr. Fergusson, who sat near him, in his gown also. What Mr. Fergusson did, cannot be matter of *judgment* or *opinion* in such a witness, but matter of *certainty*: the conduct imputed, if it really existed, could neither be unobserved nor forgotten; it was exactly the same as if I were at this moment to break out into madness, and insult the Court.—In such a case, would any of you qualify your evidence of such a scene, passing before your eyes, with I *think*, or I *believe*?—No:—you would say at once, I *saw* that gentleman hold up his fist, and insult and threaten the Judges. Such extraordinary transactions address themselves directly to the *senses*, and are not open to qualifications of opinion or belief. For the same reason, Mr. Smith and Mr. Bainbridge must both be perjured, if the evidence of Rivett be the truth; and Mr. Warren (subject to the very same observation) will swear positively that he saw Lord Thanet severely assaulted, and THAT HE DID NOT STRIKE. Is this a mere negative in opposition to Rivett's affirmative oath? Certainly not: for there are some negatives which absolutely encounter the inconsistent affirmatives, and with equal force.

Let me suppose any man to say at this moment,

“*Mr. Mackintosh*” (who sits close by me) “*struck* “*Lord Thanet*,” who is just before me, whilst I was speaking to you, the Jury, and I were to answer that “*he did not*,”—that would, no doubt, be in *form* a negative proposition; but it would comprehend a *counter-affirmative* if I had seen Mr. Mackintosh in such a situation, relative to Lord Thanet, as that he was not near enough to strike him, or that, if he had struck him, I must inevitably have seen him. Upon this principle, which it is indeed pedantry to illustrate, because common sense obtrudes it upon the weakest, Mr. Warren will tell you **POSITIVELY** that Lord Thanet did *not* strike Rivett; and that, at the time when this violence is imputed to him, Mr. Fergusson, who is reported to have begun the affray, and who had, it seems, a stick wrenched from him, was in his place at the Bar.

I will then call to you Mr. Maxwell, a gentleman of rank and fortune in Scotland, who lately married a daughter of Mr. Bouverie, Member of Parliament for Northampton. He stood under the witness-box, which may be as in that corner, (*pointing to a corner of the Court*,) commanding a full and near view of every thing that could pass; and he will confirm, in every particular, the evidence of Mr. Warren, Mr. Bainbridge, and Mr. Smith. I will also call Mr. Whitbread, who attended the trial as a witness, who was near Mr. Sheridan, and, like him, did every thing in his power to preserve the peace. Mr. Whitbread’s situation I need hardly

describe to you. He is a man of immense fortune, acquired most honourably by his father in trade, and who possesses almost incalculable advantages, which are inseparably connected with the prosperity and security of his country: yet, from the mouth of this most unexceptionable witness, the most important parts of the evidence will receive the fullest confirmation. I shall also call Mr. Sheridan, who showed his disposition upon the occasion by his conduct, which was noticed and approved of by the Judges. This will furnish the defence of Lord Thanet and Mr. Fergusson.

As to Mr. O'Brien, it is almost injurious to his interests to consider him as at all affected by any part of the proof: he does not appear to have been at all connected with Mr. O'Connor. It has been said, indeed, that he proposed a bet to the officer on the existence of the warrant, and that he afterwards whispered Mr. O'Connor; but at that period it could not relate to an escape. It has been said, farther, that he was on the spot, and that Mr. O'Connor put his hand on his shoulder: but that was no act of Mr. O'Brien's; he neither touched him, nor used any effort to assist him—no violence or obstruction is even imputed to him: even RIVETT HIMSELF has not attempted to say, that, in his progress towards the Prisoner, he was insulted by Mr. O'Brien, or that he even saw him.

I am not Counsel for Mr. Thompson, or Mr. Browne; but I apprehend I have a right to call them

as witnesses, and upon that I shall presently take the Court's opinion.—Rivett was desired to look round, to identify Mr. Thompson, but pointed to another gentleman who sat next him, and who had no sort of resemblance to him in person. Mr. Thompson, therefore, is not touched by any part of the proof; and nobody has said a word concerning Mr. Browne (as I before remarked to you), except that there was a gentleman, in a gray coat with a black collar, who had the misfortune to have his head broken, and of which he made a complaint to the Court.

Gentlemen, I am now, therefore, very near relieving you from the painful duty which this important cause has imposed upon you; a cause which, independently of the Attorney General's privilege to choose the form of trial, was well worthy of the attention of this high tribunal. So far from complaining of a trial at Bar as an oppression of the Defendants, I acknowledge the advantages they have received from it, not only in the superior learning and discrimination of the Court, but in the privilege of being tried by a Jury of Gentlemen assembled at a distance from all local prejudices, which has enabled them impartially to listen to both sides with such equal and such patient attention. I have yet another advantage from a trial in this place, which it is fit I should advert to. It enables me to remind the Noble and Learned Chief Justice of a course of practice from which he has

never deviated, and from whence my Clients will receive most abundant advantage.

Throughout the numerous criminal trials which it has fallen to my lot to see his Lordship judicially engaged in, I have observed this uniform course. Where the decisions will not fit exactly the interest of the accused, and where Counsel, as far as professional honour will warrant, are driven in argument to qualify them, and to divert their rigorous application, the Noble Lord summons up all the vigour of his mind, and fills up the full scope of his authority to prevent the violation of the law; because the law is an abstract and universal rule of action, the application of which can suffer no modification: but when the *law* is clear, and the question only is, whether persons accused of a breach of it are guilty or not guilty upon *evidence*, above all, upon evidence which is contradictory—where testimony is opposed to testimony, and witness to witness, in such confounding equality as that a Jury cannot with clearness arrive at the truth, I have a right to bring it to his Lordship's own recollection, and, for his honour, to the recollection of others, that it has been his uniform practice, not merely to lean towards acquittal by his directions to Juries, but even to interpose his opinion with the prosecuting Counsel. In a civil case, indeed, where one man asserts that to be his right or property which his opponent contends, a Jury *must* give a verdict for the one or for the other, though the scales may appear to be equal. In such cases a

Judge is frequently obliged to lament to Juries that they have a task imposed upon them which neither the conscience nor understanding of man can fulfil with satisfaction ; but I speak the language of his Lordship, and of all Judges, when I say, that *between the public and individuals* THERE CAN BE NO SUCH RACE FOR JUDGMENT. Far different is the character of English justice ; and there occurs to my mind at this moment a recent and memorable example. While the attention of the House of Commons was attracted to the great cause of humanity, in its proceedings upon the Abolition of the Slave Trade, a case was brought for the consideration of a Jury, arising out of the ill treatment of a negro in an African ship. The captain upon his oath denied the alleged cruelty, and a Bill of Indictment for perjury was found by a Grand Jury against him. I conducted that prosecution at Guild-hall, and established the ill treatment by several witnesses ; and although not one man, who was in the ship at the time, was called to contradict them, yet on its only coming out, not from their admission, but upon the evidence for the Defendant, that they had held a different language in an alehouse at Bristol, Lord Kenyon interposed on my rising to reply for the Crown. I had myself no doubt of the guilt of the Defendant ; but his Lordship, though without even expressing that he himself entertained a different opinion, declared that the interests of the public never could be served by a conviction on

such contradictory evidence. "We ought not," he said, "with such materials, to leap in the dark to 'the conclusion of guilt.' " I acquiesced, as it was my duty; and the Defendant, without any appeal to the Jury on the evidence, was acquitted.—I should only weary you, Gentlemen, by a repetition of similar instances which crowd into my memory at this moment. I am sure I could name above twenty, in this very place, upon proceedings for the obstruction of officers in the execution of their duty (proceedings most important to the public), where the evidence has been very contradictory, and where the Noble and Learned Lord, not being able to detect perjury in the defence, has uniformly held this language to Juries, and even to the Counsel for prosecutions: "This is not a case for conviction; the Defendant *may* be guilty, but there is not a sufficient preponderation in the evidence to pronounce a penal judgment."

These are the maxims, Gentlemen, which have given to British Courts of Justice their value in the country, and with mankind. These are the maxims which have placed a guard around them in the opinions and affections of the people, which, I admit, is at the same time the sting of this case, as it deeply enhances the guilt of him who would disturb the administration of such an admirable jurisprudence. But, if the Courts of England are, on this very account, so justly popular and estimable; if they have been, through ages after ages, the source

of public glory and of private happiness, *why is this trial to furnish an exception?* For myself, I can only say that I wish to do my duty, and nothing beyond it. Govern us who will, I desire only to see my country prosperous, the laws faithfully administered, and the people happy and contented under them. Let England be secure, and I am sure no ambition of mine shall ever disturb her. I should rather say, if I were once disengaged from the duties which bind me to my profession,

“ Oh! for a lodge in some vast wilderness,
 “ Some boundless contiguity of shade,
 “ Where rumour of oppression and deceit,
 “ Of unsuccessful or successful war,
 “ Might never reach me more !”

To conclude—if you think my Clients, or any of them, guilty, you are bound to convict them; but, if there shall be ultimately before you such a case, upon evidence, as to justify the observations I have made upon the probabilities of the transaction, which probabilities are only the results of every man's experience in his passage through the world;—if you should think that the appearances were so much against them as to have justified honourable persons in describing, as they have done, their impressions at the moment, yet that the scene of confusion was such that you cannot arrive at a clear and substantial conclusion—you will acquit all the Defendants.

[The Attorney General retired from the Court.]

Mr. Rous. My Lord, I am of Counsel for Captain Browne.

Lord Kenyon. When the Attorney General comes in, I will put the question to him, whether he thinks there is sufficient evidence against him or Mr. Thompson?

[The Attorney General returned.]

Mr. Garrow. My Lord, the Attorney General has returned; if your Lordship pleases, I will put that question to him.

Mr. Attorney General. I understand, since I went out of Court (and I beg pardon of your Lordships for so doing), that something has been said relative to Mr. Thompson and Mr. Gunter Browne. With respect to the former of those gentlemen, undoubtedly, his person having been mistaken here in Court, I should think it extremely improper that I should withhold from these Defendants the benefit of his testimony. With respect to Mr. Gunter Browne, I think there is some evidence against him, if I were struggling in this case, in a way in which I am perfectly sure your Lordship knows the Attorney General never does struggle, for a conviction; but I am very ready fairly to say, I should act very improperly if I showed any inclination to convict at all; and, therefore, I give up the prosecution with respect to him also.

Lord Kenyon. If you mean to avail yourself of their testimony, now is the time.

Mr. Rous. Mr. Gunter Browne is confined to a bed of sickness.

Lord Kenyon. Gentlemen of the Jury, as far as I can recollect the evidence, there is not sufficient evidence to call upon these gentlemen for their defence; if you think so, you will acquit them.

MR. BROWNE, *Not Guilty.*

MR. THOMPSON, *Not Guilty.*

EVIDENCE FOR THE DEFENDANTS.

Mr. GEORGE SMITH sworn.—Examined by Mr. GIBBS.

Q. You were present at this trial?

A. I was.

Q. The row in which the Solicitors sat represents that where we are now sitting, and the Counsel before us?

A. It does.

Q. And the place in which the Prisoners stand was behind?

A. Yes.

Q. In what part of the Court were you?

A. Almost during the whole of the trial I sat in the Solicitors' seat.

Q. Are you at the Bar?

A. I am.

Q. I believe the Prisoners stood in the place allotted for them, three in the front, and two behind?

A. Exactly.

Q. Who were the three in front?

A. Mr. O'Coigly, Mr. Binns, and Mr. O'Connor; Mr. O'Connor was on the left as he looked at the Judges, and on the right as they looked at him; Mr. Binns in the middle, and Mr. O'Coigly next the Gaoler; my seat was directly under the Gaoler, at the end of the seat.

Q. Do you remember the time when the verdict was brought in?

A. Perfectly.

Q. Did you observe any thing happen at that time?

A. I recollect that Mr. O'Connor put his leg over the Bar, and there was a press behind me, but a very trifling one, to get at him.

Q. This was before sentence was pronounced?

A. Before sentence was pronounced.

Q. Did that cease?

A. Yes: silence was called, and that disturbance ceased. The Judge then proceeded to pronounce sentence; I was at that time sitting, as I have de-

scribed, at the end of the seat directly under the Gaoler ; and I leaned against a projecting desk, looking up at O'Coigly during the whole of the sentence, so that my back was to the Bow Street Officers : that instant that the Judge concluded his sentence, Mr. O'Connor put his leg over the Bar, and the Gaoler caught hold of his coat.

Q. At this time did you observe where Lord Thanet sat ?

A. At that particular moment I cannot say I saw my Lord Thanet, but I know that he and Mr. Browne were both sitting on the Solicitors' seat within one of me.

Q. Where was Mr. Fergusson at this time ?

A. I do not know ; I did not observe him at that time.

Q. You were proceeding to state what passed after the sentence was pronounced.

A. At the same moment that Mr. O'Connor put his leg over the Bar, before I had recovered myself from the leaning position in which I sat, one of the Bow Street Officers, I am not sure whether it was Rivett or Fugion, *set his foot upon my back*. I immediately started up and drove the man off, and asked him what he meant,

Q. How did you drive him off ?

A. With my elbow, and by starting up.

Q. What was his answer ?

A. *He damned me*, and told me he had business, and would press on.

Q. Was there good room for him to get by, or was this a narrow place?

A. It was so narrow that it was impossible two people should pass without contrivance; a short struggle followed between the Officers and myself, for there were several people who were pressing behind, and I could not get out of the seat where I was without making that resistance.

Q. How did you get out at last?

A. At last I struggled a great while with my elbows to make room for myself; I got up, stepped upon the division between the Solicitors' and the Counsel's seats, and from thence to the table; I then turned round immediately, and I then saw the same man pressing upon my Lord Thanet, in the same way in which he had been pressing upon me.

Q. You said Lord Thanet and Mr. Gunter Browne were within one of you?

A. Yes.

Q. Did you observe this immediately upon your extricating yourself?

A. *The instant I extricated myself I turned round and saw a man pressing upon Lord Thanet*, with this difference, that when I resisted him, I did not observe that he had any staff or stick, but when I saw him with Lord Thanet *he was striking Lord Thanet with a stick*, but what the stick was I cannot say; Lord Thanet stood with a short stick in both his hands, dodging with his stick, and receiving the blows of the Bow Street Officer upon that stick.

Q. Lord Thanet was guarding himself, with his hands up, from Rivett's blows?

A. Exactly so.

Q. You do not know which Officer it was?

A. I am not certain, I think it was Rivett.

Q. Before this happened, Rivett had had a struggle with him?

A. I had had a struggle with Rivett in the first instance; and I should state, that during that struggle, Mr. O'Connor, who had endeavoured to get away, had effected his escape from the Gaoler; and the consequence was, that the people pressed forward from the opposite end of the bench, to prevent Mr. O'Connor from effecting his escape; by which means every person who sat in that narrow seat, was placed, if I may say so, between two fires; for the Bow Street Officers were pressing up from one side, and the crowd were pressing up from the other side.

Q. You say, as soon as you got from Rivett, you saw him *instantly engaged in this way with Lord Thanet*?

A. Yes.

Q. Could Rivett, in the interval between the struggle with you, and the struggle you instantly saw him have with Lord Thanet, have got over to the Counsel's table, and had a contest with a man who had a stick, and taken that stick from him?

A. Impossible; I think so at least; the interval was no longer than that which elapsed from my get-

ting from the seat to the division, and from thence to the table.

Q. Which you did as expeditiously as possible ?

A. Certainly ; for I felt myself in danger.

Q. When you say impossible, I need not ask you whether you saw the thing happen ?

A. Certainly not.

Q. *Had you your gown and wig on ?*

A. *I had.* Very shortly after I got upon the table, a man took up one of the swords, and drew it, and flourished it about over the heads of the people ; very shortly afterwards I saw this sword coming in a direction immediately to my own head ; I avoided the blow by springing off the table into the passage leading into the street.

Q. *Did you at any time see Lord Thanet strike this Officer, let him be whom he may ?*

A. *I never saw Lord Thanet in any situation but acting upon the defensive.*

Q. *If Lord Thanet had struck the Officer, do you think you must have seen it ?*

A. *Certainly ; during the time I had my eyes upon him.*

Q. *I think you told me you saw the Officer first pressing by Lord Thanet, and then striking him ?*

A. *Yes.*

Q. *And if he had struck the Officer, you must have seen him ?*

A. *Certainly, at that time.*

Q. *Do you remember Lord Romney coming down from the Bench ?*

A. Perfectly well.

Q. Do you recollect, upon Lord Romney's saying the Prisoner was discharged, or acquitted, any person making an observation to him?

A. I remember there was an altercation between Lord Romney and myself, in consequence of his saying that the Prisoners were not acquitted.

Q. There was a misapprehension between the words acquitted and discharged?

A. I apprehend so.

Q. However, you were the person that had the conversation with him?

A. Yes.

Cross-examined by Mr. ATTORNEY GENERAL.

Q. You insisted that they were acquitted, and Lord Romney insisted that they were not acquitted?

A. Exactly so.

Jury. I wish to ask whether you left the Court during the riot?

A. No, I did not; I jumped off the table in consequence of a blow that I saw coming at my head, and I shortly after returned to the table again.

Q. Did you observe Lord Thanet leave the Solicitors' box?

A. No, I did not.

Q. Do you know whether he did, or not, leave the Solicitors' box?

A. I cannot say, for the riot lasted a very short time after I had left the table.

Lord Kenyon. Was the blow aimed at your head?

A. By no means; it appeared to me that all the blows struck by that sword were struck by a man that did not know what he was about.

Q. Were there any wounds?

A. I heard there were, but I do not know of any.

Mr. BAINBRIDGE sworn.—Examined by Mr. BEST.

Q. You are a student of the law?

A. I am.

Q. Were you in Court during the trials at Maidstone?

A. I was.

Q. In what part of the Court did you sit at the time of the riot?

A. When the Jury returned, I left my place at the table, and went to the place where the Solicitors of the Defendants sat, to speak to Mr. Fergusson.

Q. Did you observe Mr. Fergusson during this time?

A. Mr. Fergusson sat directly before me.

Q. Did you observe Lord Thanet?

A. Lord Thanet sat on my right hand, close to me.

Q. So that you had a complete opportunity of observing them?

A. I had a complete opportunity till the fray began.

Q. Do you recollect the Bow Street Officers coming in?

A. I remember observing the Bow Street Officers standing on the right hand side of the dock.

Q. Do you remember seeing those Bow Street Officers at the time the Jury pronounced their verdict?

A. I did.

Q. What did you observe them doing at this time?

A. I observed two standing with their eyes fixed upon Mr. O'Connor, as the impression struck me.

Q. Do you recollect them after the sentence was pronounced?

A. Yes, I do.

Q. What did you see them do at that time?

A. I observed one, whom I had from observation upon the trial known to be Rivett, put his knee upon the bench that came over into the Solicitors' seat, and get over, and press directly forward.

Q. You say he pressed forward: in what direction?

A. He pressed directly on to the bench where the Solicitors for the Defendants had sat, and the Counsel for the Defendants had sat.

Q. Where was Lord Thanet at this time?

A. My Lord Thanet was on the right hand of me, and in the place where the Solicitor for Mr. O'Connor had sat, I believe most part of the day.

Q. *Where was Mr. Fergusson then?*

A. Directly before me, in his place.

Q. Was Mr. Fergusson at that time in the Solicitors' place, or the place appropriated for the Counsel?

A. Mr. Fergusson was in his own place, and the place which he had kept the whole day.

Q. Did you see the Bow Street Officers attempt to pass Lord Thanet?

A. I saw the Bow Street Officers attempt to pass Lord Thanet; and Lord Thanet, upon being pressed upon, moved upwards, as if to prevent being over-powered or crushed, and got upon his legs.

Q. Did Lord Thanet do any thing to obstruct this Officer?

A. To my opinion, nothing in the world.

Q. I think you say, on the contrary, he moved up?

A. He endeavoured to get upon his legs; for the pressure of the people upon him was such, that, if he had not got up, he must have been totally knocked under the bench.

Q. At this time did you see whether Lord Thanet struck this Bow Street Officer, or not?

A. I never observed Lord Thanet strike the Bow Street Officer, or any body else.

Q. From the situation in which you were at this time, if he had struck him, do you think you must have seen him?

A. Certainly I must.

Q. If Lord Thanet, at this time, had been taking

an active part in the riot, must you have seen that also?

A. I must have observed that too.

Q. Did Lord Thanet do any thing to aid the escape of Mr. O'Connor, or add to the tumult which then prevailed in Court?

A. Nothing in the world, that I saw.

Q. Did you observe Mr. Fergusson at this time?

A. I did.

Q. Now, I will ask you if Mr. Fergusson struck any body?

A. I never saw Mr. Fergusson strike any body; and, if he had struck any body, I think I must have seen it.

Q. Did it appear to you that Mr. Fergusson encouraged Mr. O'Connor, or at all favoured him in his escape?

A. Not the least, quite the contrary.

Q. Did you observe whether Mr. Fergusson had any stick?

A. I observed no stick whatever.

Q. If Mr. Fergusson had at this time been brandishing a stick, do you think you must have seen it?

A. I must certainly have seen it, from the situation I was in.

Q. During this time did Mr. Fergusson continue in the same situation in which he was?

A. He continued in his seat till he was pressed upon, and the whole was a scene of confusion.

Q. Did it then appear to you that Mr. Fergusson

only left his seat in consequence of the pressure upon him ?

A. That was the only cause, as it struck me.

Q. Do you recollect seeing Rivett engaged with Lord Thanet ?

A. I do ; he appeared to me to be striking him, and trying to beat him down ; in short, he was in the act of offence, with his hand uplifted, as it appeared to me.

Q. Do you recollect Mr. Fergusson saying or doing any thing at that time ?

A. I remember Mr. Fergusson asking him to desist, and asking him if he knew who he was striking.

Q. Did he give any answer to that ?

A. He, I think, made use of words to this effect : " I neither know nor care." Upon which Mr. Fergusson said, " That is Lord Thanet, I insist upon your not striking him."

Q. Do you recollect whether Rivett had a contest with Mr. Fergusson before he got to Lord Thanet ?

A. Not to my observation ; I had seen none.

Q. From the situation in which Mr. Fergusson was, could Rivett have got a stick out of Mr. Fergusson's hand ?

A. I think, if he had had a stick in his hand, he might ; I observed no stick in his hand.

Q. Could he have struck him, and wrested the stick out of his hand, without your seeing it ?

A. I think not.

Q. You was there during the whole of this tumult?

A. I was in Court during the whole of the trial.

Q. Was Mr. Fergusson any part of that time in the place allotted for the Solicitors?

A. Never.

Q. Was he ever nearer to Mr. O'Connor than the place for the Counsel?

A. Never; I was between them.

Q. Where did he go, when he quitted that place?

A. Towards the Judges, and away from the tumult.

Q. *During the whole of this time, did Mr. Fergusson at all appear to encourage the tumult?*

A. Quite the contrary, I think.

Cross-examined by Mr. LAW.

Q. You have said that Mr. Fergusson, so far from encouraging this tumult, acted quite the contrary?

A. Yes.

Q. Am I to understand you, that he endeavoured to dissuade them from riot?

A. I heard him say to Mr. O'Connor, "Be quiet, and keep your place; nothing can hurt you."

Q. Was that after the acquittal?

A. It was after the verdict of acquittal had been

given, and before the sentence was passed upon O'Coigly.

Q. But after the sentence was pronounced, did you observe Mr. Fergusson doing any thing that was quite the contrary?

A. He seemed to say, "Be quiet;" and, from Mr. Fergusson desiring him to keep his place, and having complained to the Court of a person that wished to make a tumult, he appeared to me to be a person who wished to keep every thing quiet and in order.

Q. You have told us, that, during the whole day. Mr. Fergusson kept the same place?

A. As to the same place, I believe he might have moved to the right; he might have been, perhaps, to the right of Mr. Plumer in the morning; but what I mean is, that he never moved out of the place where the Counsel sat.

Q. Then he must have been under your own observation the whole of the day?

A. Yes.

Q. Did he never appear to be upon the table in the course of that day?

A. While the Jury were retired, he went across the table, and, I believe, went to speak to somebody near the witnesses' box; but at that time people were conversing and walking about, but there was no idea of a riot then.

Q. Will you say, after the verdict was brought in, he was never upon the table?

A. He was never upon the table that I know of, till he was pressed upon by the Bow Street Officers.

Q. Did you, during the day, see a stick in his hand, or that he had not had a stick?

A. I will swear that I did not see a stick in his hand.

Q. And you had him so much under your observation, that you must have seen it?

A. As much as a person could do, sitting in a Court of Justice; it was quite ridiculous to suppose he had a stick in his hand.

Q. Was you a witness, or concerned in that trial?

A. No. I went from mere curiosity.

Q. You did not go with Mr. Fergusson?

A. No.

Q. And you will swear that he never had a stick in his hand?

A. I will swear I did not see a stick in his hand; and I think I must have seen it, if he had.

Q. If you had him constantly in view, you must?

A. It cannot be supposed that I had my eyes upon him for fourteen hours.

Q. WILL YOU VENTURE TO SWEAR, THAT DURING THE RIOT HE HAD NO STICK?

A. I WILL.

Jury. Did Lord Thanet leave the Court during the riot?

A. Lord Thanet moved, as Mr. Fergusson did; upon being pressed upon, he got up upon the

bench ; and when he moved up, Rivett was above him, and trying to strike him ; and Mr. Fergusson then said, " Who are you striking, Sir ? "

Jury. Whether he saw Lord Thanet, during any part of the period, near the wicket-gate that leads to the narrow street ?

A. I saw Lord Thanet, I think, during the whole riot ; and I think, instead of being there, he went, when he did move, quite the contrary way, and not at all towards the gate.

Mr. Justice Lawrence. From Mr. Fergusson complaining of a tumult, it seemed as if he wished to keep every thing in order ; who was the person that he complained of ?

A. Rivett.

Q. That was before the sentence was passed ?

A. Yes.

Q. How far was Rivett from Mr. Fergusson at that time ?

A. I think he must have been about three yards.

Q. At that time was he not making use of this motion (*describing it*), and saying, " Keep back, " where are you going ? "

A. Yes ; and I think Mr. Justice Buller then said, " What is the matter ? " Mr. Fergusson then said, " Here is a person making a noise, and will " force himself into the Court." Mr. Justice Buller then said, " What do you mean, Sir ? " He then said, " My Lord, I have a warrant against Mr, " O'Connor." He then told him to keep back.

Mr. WARREN *sworn.—Examined by Mr. MACKINTOSH.*

Q. I believe you was present at the trials for high treason at Maidstone?

A. I was.

Q. Was you present the second day of those trials?

A. I was.

Q. Where did you sit during the evening of the second day?

A. Just by the witness-box, opposite to the Jury.

Q. After sentence was pronounced upon O'Coigly, tell us what you observed of the confusion that arose in the Court.

A. After the sentence of death was pronounced upon O'Coigly, the first part of the affray that I recollect was this; Mr. O'Connor endeavoured to get out of the dock; he got almost out of the dock, on the left side; the Gaoler, who was on the other side of the dock, reached across the dock, and caught him by the coat; he detained him for a very short space of time in that situation; the coat tore, or slipped through his hands.

Q. *At that time, when the Gaoler had hold of Mr. O'Connor's coat, did any body reach or step backwards between them?*

A. Nobody.

Q. *Then Mr. Fergusson did not?*

A. Certainly he did not. Mr. O'Connor got away, either from the coat being torn, or slipping through the Gaoler's hands ; he got down upon the ground ; he soon mixed with the crowd, and I lost sight of him ; as soon as he endeavoured at first to get away, two persons, who had before appeared to be Officers from Bow Street, with several others, rushed forward to apprehend him. In their endeavour to apprehend him, the first person upon whom they appeared to rush with any great violence, was Mr. George Smith, who was sitting at the end of the seat of the Solicitors for the Prisoners ; he was forced from thence, and came to the place where I was sitting. The next person that I observed forced from his seat, was Mr. Dallas, one of the Counsel for the Prisoners ; he came likewise and sat near me ; the Officers still rushed on towards the end of the Counsel's seat, and of the Solicitors' seat. At the farther end of the Counsel's seat, or near the end of it, Mr. Fergusson was sitting, to the best of my recollection.

Q. Had he a stick in his hand ?

A. No stick that I saw.

Q. Had you your eye upon him ? and if he had, must you have seen him ?

A. He is an acquaintance of mine, and he was in his professional dress ; and if he had, I think I could not have mistaken it. Lord Thanet was sitting upon the Solicitors' bench, almost immediately behind Mr. Fergusson. By this time the confusion had

become general, and a number of people had got upon the table, from all parts of the Court.

Q. If Mr. Fergusson had brandished a stick, or presented it to Rivett, must you have seen it?

A. I certainly trust.

Q. I need not ask you if you did see it?

A. I did not see it; Mr. Fergusson had risen up, and Lord Thanet had risen up.

Q. Supposing it possible that a stick had been in Mr. Fergusson's hands, and it had escaped your eye, do you think it possible, from time and place, that Rivett could have wrench'd it out of his hands before he attacked Lord Thanet?

A. I do not think it possible he could have a stick of any sort.

Q. Was Lord Thanet nearer to Rivett than Mr. Fergusson?

A. I think he was rather; one of the Officers, but I do not know which, I do not know their persons, *pressed very rudely, as it appeared to me, upon Mr. Fergusson; I believe that Mr. Fergusson might shake his shoulder when he felt the man's hand upon it; that is all the resistance I saw made on the part of Mr. Fergusson.*

Q. *What did you see pass between these Officers and Lord Thanet?*

A. *The first thing I observed particularly of Lord Thanet was, that he was lying almost down upon his back upon the table, with a small stick or cane, which*

he held in both hands over his head or face, in this manner : one of the Officers was striking him with a stick, and Lord Thanet endeavoured, with very little success, to defend himself by the use of this stick, which he held in both his hands,

Q. *Now, before that period of which you last spoke, did you observe Lord Thanet give a blow, or any provocation, to this Officer?*

A. *I never saw him give a blow ; I never saw him give any provocation ; I never saw him in any other way than I have mentioned, till he left his seat ; how he left his seat I cannot tell ; they had risen up upon their seats ; when they were pressed upon, they rose towards the left hand side of the Prisoner, as the Prisoner faced the Judges.*

Q. *Did they go out of sight ?*

A. *No.*

Q. *Did they go off that table ?*

A. *They were not upon that table ; Mr. Fergusson was upon the table afterwards, but not on the table at any time that I have yet spoke to—Lord Thanet was then lying upon the table. I am not able to say how Lord Thanet got from that situation ; I do not know that I took particular notice of what passed after, with respect to Lord Thanet ; Mr. O'Connor was brought into Court, and then the riot ceased.*

Q. *Did you take any particular notice of Mr. Fergusson, between the last time you have been*

speaking of, and the time of Mr. O'Connor being brought into Court?

A. No: I do not recollect any thing more.

Q. I need not ask you if you saw Mr. Fergusson brandish a sword?

A. No.

Q. Did you see Mr. Fergusson, after the sentence of death was passed, go back to his old place?

A. I did not.

Q. Were your eyes fixed upon that part of the Court?

A. They were, most particularly; I was placed in a situation in which I could very well see.

Q. So that it was impossible for Mr. Fergusson to have gone backwards from his seat, without having struck your eye?

A. I think it was impossible.

Q. *Did you see Mr. Fergusson upon the table, before Lord Thanet was beat by Rivett?*

A. I did not.

Mr. Justice Lawrence. In what part of the Court was you?

A. Under the witness-box; I rose from thence, and got upon the table, as other people did.

Mr. Mackintosh. Did you see Lord Thanet or Mr. Fergusson take any part in any thing that had the appearance of disturbance or riot?

A. No; I did not. I saw Lord Thanet defend himself; and I have stated, that I did not see Mr.

Fergusson do any act at all, except shaking that man's hand off his shoulder.

Q. Do you remember Mr. Dallas quitting his place before he began to address the Jury?

A. I do, perfectly.

Q. And Mr. Plumer also, I believe?

A. I do not.

Q. Do you recollect Mr. Fergusson leaving his own place, in consequence of that?

A. I am rather inclined to think it was so; but I cannot swear to that.

Q. I understand you to swear most positively that Mr. Fergusson never interposed between the Jailer and Mr. O'Connor?

A. I do most positively swear I do not think he did, and if he had, I think I must have seen it.

Cross-examined by Mr. GARROW.

Q. The Dock or Bar, by which the Bow Street Officers were placed, could only occupy five or six persons?

A. No more.

Q. Only the Jailer and the Prisoners?

A. It might be three yards long, perhaps.

Q. You stated that after the sentence of death had been passed, and Mr. O'Connor had been left upon the floor, the Officer pressed forward to apprehend him—What induced you to think these were Officers rushing forwards for that purpose?

A. I took them to be the persons who had produced the warrant in Court. When they had forced themselves up to the end of the Solicitors' seat, Mr. Fergusson said, I think, "Here are two men ob-
"truding themselves between the Prisoners and the
"Jury." Mr. Justice Buller said, "What are you
"about? sit down;" and one of them produced a paper, saying either that it was a warrant to take up Mr. O'Connor, or a warrant upon a charge of high treason against Mr. O'Connor, or something to that effect; and, therefore, I supposed them to be Bow Street Officers, or Officers of Justice.

Q. I do not know whether you happened to be present in Court when those two witnesses were examined as witnesses to prove the fact of apprehending Mr. O'Connor at Margate?

A. I should suppose I was in Court, but I am not certain.

Q. But before the judgment of death was passed, it is perfectly in your recollection, that one of those persons had hinted in Court, that they had a warrant for the purpose of apprehending Mr. O'Connor?

A. That was after the Jury had returned their verdict, and before that verdict was pronounced.

Q. Do you know Mr. O'Brien?

A. I saw him the other day for the first time in my life.

Q. You did not know him at Maidstone?

A. No; I did not.

Mr. MAXWELL sworn.—Examined by Mr. ERSKINE.

Q. Was you in Court, at Maidstone, during any part of the trial of Mr. O'Connor and others ?

A. I was, frequently.

Q. Did you hear Mr. Justice Buller pronounce sentence of death upon O'Coigly ?

A. I did.

Q. In what part of the Court was you at that time ?

A. At that time I was immediately to the left of the witness-box, rather farther from the Judge than the witness-box.

Q. Was you elevated above the Court ?

A. I was elevated above the table where the Counsel sat.

Q. Did that elevation and position give you a view of that part of the Court where the Bow Street Officers entered, and where the Solicitors for the Prisoner sat ?

A. That gave me a distinct view of that part of the Court.

Q. Do you remember when Mr. Justice Buller had finished pronouncing sentence upon Mr. O'Coigly—do you remember any persons rushing forwards, as if to seize Mr. O'Connor ?

A. I remember some of the Bow Street Officers,

among whom I knew Rivett and Fugion, rushed violently to that place where Mr. O'Connor was.

Q. At the time that those two persons, Rivett and Fugion, rushed forwards in the direction you have described, did you observe where Lord Thanet was ?

A. I did ; my Lord Thanet sat at that time in the Solicitors' place.

Q. Did you observe where Mr. Fergusson was at the same time ?

A. Mr. Fergusson sat in his own place, where he had been as Counsel for some time, on the Bench before the Solicitors' bench.

Q. Which of them was nearer to that side of the Court where the Jury-box is, and where Mr. O'Connor was ?

A. I think Lord Thanet was rather, perhaps, the nearest of the two ; but there was very little difference.

Q. Did you see any thing pass between Rivett, the officer, and Lord Thanet ?

A. I did.

Q. *Describe to my Lord and the Jury what you saw.*

A. *After Rivett had forcibly overturned and driven from their places those who stood between him and Mr. O'Connor, he got to Lord Thanet, who was one of the nearest. Lord Thanet, when he was pressed upon, got out of the place where he was, and went from the scene of tumult towards the table.*

Q. Was that farther from the Prisoners than he was before?

A. Considerably farther from the Prisoners than when he was first pressed upon.

Q. *When Lord Thanet retired in that manner out of the Solicitors' box, over towards the Counsel's table, did Rivett pursue his course on towards the Prisoners in the line of the Solicitors' box, or how else?*

A. *He followed Lord Thanet, and struck him repeatedly.*

Q. *Had Lord Thanet struck Rivett before he went over from the Solicitors' seat towards the table?*

A. *Lord Thanet never struck Rivett before nor after that.*

Q. Had you such a view of the situation in which Lord Thanet was placed, and what he did, as to swear merely to your opinion and belief, or do you swear it positively?

A. I had such a view, that I swear it positively; by that time I had quitted the place where I was, and got nearer to Lord Thanet and the other persons who were struck.

Q. Were any other persons struck besides Lord Thanet?

A. I saw several blows given, but I cannot say to whom, by the Bow Street Officers and those who followed them.

Q. Do you know whether Rivett struck any person besides Lord Thanet?

A. I do not positively know whether he struck any person or not.

Q. *But you swear positively Lord Thanet did not strike Rivett at all?*

A. *He did not; but merely put himself in a posture of defence and lying back upon the table.*

Q. Had Lord Thanet a stick?

A. He had a small stick; which he held up over his head to defend himself; he was leaning back upon the table, an attitude in which it would have been difficult to have acted offensively.

Q. Did you see Lord Thanet subsequent to the time that he was in that situation?

A. I did.

Q. You say that the Officers, and particularly Rivett, rushed into the Court, and having passed one or two that were before Lord Thanet, attacked Lord Thanet; *what length of time might elapse between Rivett first rushing in and the time he struck Lord Thanet?*

A. *A very short space of time indeed.*

Q. *Was it possible that before Rivett struck Lord Thanet he could have gone within the Counsel's place, where you have described Mr. Fergusson to be, and have wrested a stick out of his hand before he came to Lord Thanet?*

A. *Rivett did not go to take a stick out of his hand, for he had no stick in his hand; he did not go up to*

Mr. Fergusson, but immediately went up to Lord Thanet and struck him.

Q. If Rivett should have said here, that he never saw Lord Thanet till after he had taken a stick from Mr. Fergusson, from what you observed, is that true or false?

A. I should certainly say it was false, without any hesitation.

Q. During the time that you thus observed Lord Thanet in the attitude of defence, retreating from the scene of tumult, and pursued by Rivett, where was Mr. Fergusson?

A. He was in his place, and remained in his place till he was pressed upon, and then he got out of the scene of tumult upon the table.

Q. Did you see him while he was in his seat, and did you see him move from his seat to the table by the pressure that was upon him?

A. I did.

Q. If, whilst Mr. Fergusson was in his seat, or if while he was pressed upon when he rose from his seat, if in either of these situations he had not only had a stick, but had brandished and flourished that stick, I ask, must you have seen it or not?

A. I must have seen it; he was so directly before me, that it is quite impossible but I should have seen it; I CAN SWEAR THAT MR. FERGUSSON HAD NOTHING IN HIS HAND, BUT A ROLL OF PAPER IN HIS RIGHT HAND.

Q. And was in his professional dress?

A. He was.

Q. If Mr. Fergusson had done any one act to encourage the tumult that was undoubtedly then existing, or done any one act inconsistent with his duty as Counsel, or committed any one act of indecency or turbulence, must you have seen it?

A. I must.

Q. Then let me ask you, upon your solemn oath, did he do any such thing?

A. He did not; on the contrary, he endeavoured to keep quiet in the Court, by admonishing the people in Court to be quiet. Mr. Fergusson said particularly to Rivett, when he was striking Lord Thanet—"Do you know who you are striking?" That is not a person likely to begin a riot.

Q. Did you see where Mr. Fergusson went to after he was upon the table?

A. He got upon the table, and got farther from the scene of tumult; and I do not know whether he sat down upon the table or not; he went towards the Crown Lawyers.

Q. Did you see Sir Francis Burdett?

A. I did. He at first stood by me in the witness-box, and when the confusion began, he got nearer to the place of confusion at the same time that I did. I saw Mr. Fergusson remove Sir Francis Burdett from the scene of confusion, and put him farther from it.

Q. And you saw him also place himself at a distance from it?

A. Yes.

Q. Did you afterwards see him go upon the table towards the Judges?

A. I did; I saw him till all the violence was over.

Q. *Then can you take upon you to swear positively that neither Mr. Fergusson nor Lord Thanet, during the tumult, went towards Mr. O'Connor?*

A. *They went in a directly opposite direction.*

Q. *Do you swear that from your own opinion and belief, or from certain knowledge?*

A. *I swear it positively from certain knowledge.*

Cross-examined by Mr. ADAM.

Q. You saw Rivett and Fugion pressing forward?

A. I did.

Q. Did you know them before?

A. I knew them from having seen them examined in Court upon that trial.

Q. Only from that circumstance?

A. Only from that circumstance.

Q. During this affray you shifted your situation to another part of the Court?

A. Yes; I got upon the table.

Q. And you say you saw Sir Francis Burdett shift his place?

A. He shifted his place at the same time.

Q. From what part of the Court did he come?

A. From the witness-box ; he stood on my right hand.

Q. To what part of the Court did he go ?

A. He also went on to the table.

Q. Do you mean that he remained upon the table ?

A. I cannot say whether he remained upon the table, but he went there with me.

Q. Did he remain on the table any considerable time ?

A. The tumult was over very soon after that.

Q. The Counsel for the Crown sat immediately under the witness-box ?

A. They sat on the same side.

Q. Round the angle ?

A. Yes.

Q. Therefore, it was necessary when you and Sir Francis Burdett shifted your places, that you should go over the heads of the Counsel for the Crown, to get to the table ?

A. Exactly so ; we jumped from the neighbourhood of the witness-box.

Q. Do you remember when Sir Francis Burdett jumped from the neighbourhood of the witness-box to the table, did he not jump immediately from the table into the crowd ?

A. I cannot say whether he did or not ; but I saw him standing upon the side of the table, or sitting upon the side of the table, till Mr. Fergusson removed him.

Q. But that was near the conclusion of the affray?

A. It was.

Q. What circumstance was it that brought you to Maidstone?

A. Merely to be present at the trials.

Mr. Erskine. You are a gentleman possessing an estate in Scotland?

A. Yes.

Q. And I believe married a daughter of Mr. Bouvierie?

A. Yes.

Lord Kenyon. Did you see Mr. O'Connor go out of the dock?

A. Yes.

Q. How soon was he out of your sight?

A. I do not know that he was out of my sight.

Q. Do you know the situation of the wicket?

A. Yes.

Q. Where were Mr. Fergusson and Lord Thanet during the time that elapsed between his leaving the Bar and being brought back again?

A. Upon the table.

Q. Did the crowd coming upon them prevent you from seeing them?

A. No: I was so situated that I saw them both distinctly; I was a great deal higher than they.

SAMUEL WHITBREAD, *Esq. sworn.—Examined by Mr. GIBBS.*

Q. You was present, I believe, at the time of this trial?

A. I was in Court the latter part of it, after I had been examined as a witness.

Q. In what part of the Court were you?

A. After having been examined as a witness I retired out of the witness-box, behind, and came into the Court again.

Q. Whereabouts was you when the verdict was brought in?

A. Considerably behind the witness-box.

Q. Had you from thence a perfect view of the Court?

A. Of the lower part of the Court.

Q. Had you a perfect view of the dock in which the Prisoners were, the Solicitors' seat, and the seat where the Counsel sat?

A. I had certainly a view of the whole of that part of the Court.

Q. Between the verdict and the sentence we understand some Bow Street people came in, and spoke of a warrant?

A. There was some tumult, and that subsided upon Mr. Fergusson calling the attention of the Court to the cause of it. He waved his hand and spoke to them; he then turned to the Bench, and

said, " My Lord," or some such word, just to draw the attention of the Court: upon that, Rivett, whom I knew before, said he had a warrant against Mr. O'Connor, and he thought he was going to escape. Mr. Justice Buller then said, " Patience," or some such word ; and then sentence was pronounced.

Q. After sentence was pronounced, did you observe O'Connor ?

A. I observed him put his foot upon the front part of the dock, and get out of the dock : having carried my eye after him some time, my eye returned to the Bar, and there I saw Rivett violently attacking Lord Thanet ; he had a stick in his hand : I did not see *him* strike a single blow ; I saw many blows struck at him, and he was endeavouring to ward them off.

Q. *Did it appear to you that Lord Thanet made any attack upon Rivett to provoke this ?*

A. *No ; on the contrary, he was defending himself against a violent attack of Rivett's upon him.*

Q. Where was Lord Thanet at the time that you observed this ?

A. I think he was close to the table, leaning back upon the table in the act of defending himself, with his hands up, in which I think he had a stick.

Q. Did you see at this time where Mr. Fergusson was ?

A. I did not observe Mr. Fergusson at that time :

before the tumult had quite subsided I observed Mr. Fergusson upon the table, not far from the Judges.

Q. Had you your eyes upon Lord Thanet from the time you saw Rivett striking him in this way?

A. No, I had not, because there was a great deal of tumult behind, and of persons trying to get out at the door behind the Bench, and the bailiffs resisting their attempts, which engaged my attention some time.

Q. Did you see Mr. O'Brien during this time?

A. I do not recollect that I did.

Q. Did you know Mr. O'Brien well?

A. I knew him perfectly by sight.

Q. If he had been acting in this scene, must you have noticed it?

A. In a scene of confusion many things must have escaped the observation of every person; but I think it is more than probable that I must have seen such a person as Mr. O'Brien, if he had been active.

Cross-examined by Mr. ATTORNEY GENERAL.

Q. How long did you remain at Maidstone?

A. The next morning, I think, I passed you on the road to London.

Mr. Attorney General. I beg your pardon, I did not recollect that circumstance.

Q. Previous to the Officers approaching the

place where Mr. O'Connor was, had you heard that there was to be a rescue?

A. I had not.

RICHARD BRINSLEY SHERIDAN, *Esq.* *sworn.*—
Examined by Mr. ERSKINE.

Q. You were subpœnaed as a witness to attend the trials at Maidstone?

A. I was.

Q. Were you in Court at the time when the Jury retired to consider of their verdict, and also when they returned with it?

A. I was.

Q. And during the remaining part of the time till the tumult ceased?

A. During the whole of that time.

Q. In what part of the Court were you when the Jury brought in their verdict?

A. Sitting with Sir Francis Burdett in the witness-box; that box was raised very considerably above the table, so that I had a direct view of every thing passing in the Court.

Q. Had you then an opportunity of perfectly observing the place where the Solicitors sat, and the dock where the Prisoners were, and the place where the Counsel were?

A. A most perfect opportunity, without being in the least annoyed or mixed with the tumult.

Q. Do you remember the Jailer laying hold of Mr. O'Connor; perhaps you did not see that?

A. The first that I observed of the tumult was prior to the sentence being passed upon O'Coigly; I did not see Mr. O'Connor make an attempt to go, but I had observed to the High Sheriff that I fancied he would come out, for that I had observed at the Old Bailey, that they had left the Bar immediately upon the Jury pronouncing them Not Guilty. The riot then commenced, and I observed some men pressing very violently towards the box where Mr. O'Connor was; my attention was taken up with that: Mr. Fergusson then appealed to the Court, and said, "Here are two riotous fellows," or something of that sort, "disturbing the peace of the Court." Rivett then said, "I have a warrant to apprehend Mr. O'Connor." Mr. Justice Buller desired him to be quiet, and then put on his cap to pass sentence, and every thing subsided.

Q. After that did you observe the Bow Street Officers rushing in, in the way that we have heard?

A. The first thing I saw was Mr. O'Connor getting very nimbly over the front of the dock, and going towards the narrow street, and these men rushing after him. Certainly the man who could have thrown himself most in the way of the men, was Mr. O'Brien, if he had chosen to do it.

Q. Are you acquainted with Mr. O'Brien?

A. I know him intimately.

Q. Is he a strong man?

A. Certainly he is.

Q. If Mr. O'Brien had been desirous of opposing himself to the Officers, and to prevent them from going after him, might he?

A. He was precisely in the best situation to have done it.

Q. Had you an opportunity of seeing whether he did or not?

A. He did not, and I am sure he was not there in the subsequent part of the tumult.

Q. Can you take upon yourself to swear positively that he gave no manner of assistance?

A. Positively.

Q. And Mr. O'Brien had an opportunity of affording the most essential means of escape to Mr. O'Connor, if he had chosen?

A. I think the whole idea was folly and madness, and that no assistance could have effected it.

Q. But Mr. O'Brien did the contrary?

A. Yes; he retired behind the box, and I did not see him afterwards. I was very attentive to the whole of it, and was making my observations with the High Sheriff, who more than once endeavoured to persuade me to leave the witness-box, and endeavour to quell it.

Q. Did you see Lord Thanet at the time the Officers rushed in?

A. I did not see him till the time he was struck; I saw him struck.

Q. Did he return the blow, or show any thing like activity, or a disposition to activity?

A. I saw him when he was first pressed upon. It was not a tumult merely near the dock, but the whole Court was a scene of general tumult, and a scene of panic, and certainly with the least reason—there was a tumult behind us in the witness-box; there was a general calling-out not to open the doors, some calling out for soldiers and constables, and there did appear to me a sincere panic and apprehension that there was a planned rescue. I perceived plainly there was no such thing, and endeavoured all I could to persuade them so. The Officers were beating down every body, forcing their way and pressing upon every body. Lord Thanet had a stick in his hand with which he was parrying the blows, which came amazingly quick; it seemed to me an incredible thing that he was not extremely hurt, and he never returned a blow, but retired from the scene of tumult farther into the Court away from the Prisoners; Sir Francis Burdett was with me; and by this time Mr. O'Connor was stopped, and they were bringing him back again; he had attempted to go towards the gate with the wicket, and I observed every body to put up their hands and stop him; he might as well have attempted to get through a stone wall; if there had been six or eight persons there who were so disposed, he might perhaps have got as far as the door, but he could not possibly have got farther.

I then saw a person upon the table, brandishing Mr. O'Connor's scimitar over the heads of the people; he seemed very much alarmed, and not knowing what he was about; I am sure it must have gone very near several persons' heads, it seemed quite miraculous that he did not do some mischief; in short, it was difficult to discover whether he meant to keep the peace or break the peace. Sir Francis Burdett saw that they had collared Mr. O'Connor, was frightened, and said with great agitation to me, that they would kill O'Connor, and he jumped over the railing; he could not go from where we were without jumping upon the table, and he ran forward; Mr. Maxwell followed him, or went at the same time; they both went towards Mr. O'Connor; I then saw very distinctly Mr. Fergusson stop Sir Francis Burdett, and use some action, saying, "You had better keep "away, and not come into the tumult at all:" I could not hear what he said, but it appeared so to me.

Q. Did you see Mr. Fergusson from the beginning of this scene, when sentence of death was pronouncing?

A. I saw him plainly in his place, after the Judge had passed sentence of death,

Q. *Did you see the crowd press upon Mr. Fergusson, and did you see him get upon the table?*

A. *I did not see him get upon the table; but as the crowd pressed upon him, he was forced upon the table.*

Q. *Did Rivett attack Lord Thanet before he could*

possibly have attacked Mr. Fergusson, and wrenched a stick out of his hand?

A. He came immediately upon Lord Thanet, when the tumult began.

Q. He could have had no conflict with Mr. Fergusson till after the conflict with Lord Thanet?

A. Certainly not.

Q. Do you know Mr. Fergusson?

A. Perfectly.

Q. If he had been upon the table flourishing and waving a stick, in the manner that has been described, in his bar dress, must you not have seen it?

A. Yes; it must have been a most remarkable thing, indeed, for a Counsel in his bar dress to have a stick flourishing in his hand—HE HAD A ROLL OF PAPER IN HIS HAND.

Q. Does that enable you to swear that Mr. Fergusson was not in that situation?

A. Certainly.

Q. Do you think if he had taken such a part in the riot, in the presence of the Judges, that you must have observed it?

A. I must have observed it.

Q. Did Lord Thanet or Mr. Fergusson ever go nearer to Mr. O'Connor after he had jumped out of the dock, or did not Lord Thanet and Mr. Fergusson retire farther from the scene of tumult?

A. They certainly did:—Upon some farther conversation I got over this place myself, and went down, and the first thing I did was to speak to the man with

the sword. I told him I thought he with his sword made half the riot himself; and he put it away. I passed Lord Thanet, who, so far from staying in the riot, went towards the Judges, as if he was going to make a complaint. I then went into the riot, and endeavoured to persuade them that there was no such thing as an attempt to rescue O'Connor; and a man that had hold of him, who knew me, said there was; and added, "These 'fellows are come down from London; they are 'Corresponding Society people, and they are come 'down on purpose to rescue him." One person in particular called to them not to believe me, and I laid hold of him, and said he should go with me to Mr. Justice Buller; I insisted upon his name and address, and he would not give it me. I then turned to the Judges, and he ran away. So far was Lord Thanet from going towards the wicket, that I passed him going up to the Judges; and Mr. Ferguson remained with me, desiring them not to treat Mr. O'Connor so, and generally endeavouring to quiet them; the only moment they were out of my eye was while I was getting over this place.

Cross-examined by Mr. LAW.

Q. You saw Lord Thanet distinctly from the time he was struck?

A. I do not mean with the stick:—I corrected

that by saying, from the time he was assaulted and driven from the seat he was in at first.

Q. Can you take upon you to say whether he gave a blow before he was struck?

A. I said from the time he was pressed upon or assaulted.

Q. You say you saw Lord Thanet going towards the Judges, as if he was going to complain—Did you hear him make any complaint to the Judges?

A. I did not hear him, certainly.

Q. I will ask you, whether you do or do not believe that Lord Thanet and Mr. Fergusson meant to favour O'Connor's escape, upon your oath?

A. Am I to give an answer to a question which amounts merely to opinion?

Q. I ask, as an inference from their conduct, as it fell under your observation, whether you think Lord Thanet or Mr. Fergusson, or either of them, meant to favour Mr. O'Connor's escape, upon your solemn oath.

A. Upon my solemn oath I saw them do nothing that could be at all auxiliary to an escape.

Q. That is not an answer to my question.

A. I do not wish to be understood to blink any question; and if I had been standing there, and been asked whether I should have pushed or stood aside, I should have had no objection to answer that question.

Q. My question is—Whether, from what you saw of the conduct of Lord Thanet and Mr. Fer-

gusson, they did not mean to favour the escape of O'Connor, upon your solemn oath ?

A. The Learned Counsel need not remind me that I am upon my oath ; I know as well as the Learned Counsel does, that I am upon my oath ; and I will say that I saw nothing that could be auxiliary to that escape.

Q. After what has passed, I am warranted in reminding the Honourable Gentleman that he is upon his oath—My question is, Whether, from the conduct of Lord Thanet or Mr. Fergusson, or either of them, as it fell under your observation, you believe that either of them meant to favour O'Connor's escape ?

A. I desire to know how far I am obliged to answer that question. I certainly will answer it in this way, that from what they did, being a mere observer of what passed, I should not think myself justified in saying that either of them did—Am I to say whether I think they would have been glad if he had escaped ? that is what you are pressing me for.

Q. No man can misunderstand me ; I ask, Whether, from the conduct of Lord Thanet or Mr. Fergusson, or either of them, as it fell under your observation, you believe upon your oath that they meant to favour the escape of O'Connor ?

A. I repeat it again, that from what either of them did, I should have had no right to conclude that they were persons assisting the escape of O'Connor.

Q. I ask you again, whether you believe, from the conduct of Lord Thanet or Mr. Fergusson, or either of them, upon your oath, that they did not mean to favour the escape of O'Connor?

A. I have answered it already.

Lord Kenyon. If you do not answer it, to be sure we must draw the natural inference.

Mr. Sheridan. I have no doubt that they *wished* he might escape; but from any thing I saw them do, I have no right to conclude that they did.

Mr. Law. I will have an answer:—I ask you again, whether from their conduct, as it fell under your observation, you do not believe they meant to favour the escape of O'Connor?

A. If the Learned Gentleman thinks he can entrap me, he will find himself mistaken.

Mr. Erskine. It is hardly a legal question.

Lord Kenyon. I think it is not an illegal question.

Mr. Law. I will repeat the question, Whether, from their conduct, as it fell under your observation, you do not believe they meant to favour the escape of O'Connor?

A. My belief is, that they *wished* him to escape; but from any thing I saw of their conduct upon that occasion, I am not justified in saying so.

Q. I will ask you, whether it was not previously intended that he should escape if possible?

A. Certainly the contrary.

Q. Nor had you any intimation that it was intended to be attempted?

A. Certainly the contrary. There was a loose rumour of another warrant, and that it was meant that he should be arrested again, which was afterwards contradicted. Then the question was mooted, whether the writ could be issued before he was dismissed from custody? Certainly there was no idea of a rescue. There was no friend of Mr. O'Connor's, I believe, but saw with regret any attempt on his part to leave the Court.

Q. From whom did you learn that there was such a warrant?

A. It was a general rumour.

Q. From whom had you heard this rumour?

A. I believe from Sir Francis Burdett; but I cannot tell.

Q. At what time was that?

A. About four or five o'clock.

Q. Have you ever said that the Defendants were very blameable; Lord Thanet, Mr. Fergusson, or any of them?

A. Certainly not.

Q. At no time since?

A. Certainly never.

Mr. Erskine. You were asked by Mr. Law, whether you believed that the Defendants wished, or meant, to favour the escape of Mr. O'Connor; *I ask you, after what you have sworn, whether you believe these Gentlemen did any act to rescue Mr. O'Connor?*

A. Certainly not; and I have stated upon my

oath, that every man in the narrow gateway endeavoured to stop him : I remarked it particularly ; because, there being a common feeling amongst Englishmen, and he being acquitted, I thought they might form a plan to let him escape.

Q. You have stated that you saw no one act done or committed by any one of the Defendants, indicative of an intention to aid O'Connor's escape ?

A. Certainly.

Q. I ASK YOU THEN, WHETHER YOU BELIEVE THEY DID TAKE ANY PART IN RESCUING MR. O'CONNOR ?

A. CERTAINLY NOT.

End of the Evidence for the Defendants.

MR. ATTORNEY GENERAL.

GENTLEMEN OF THE JURY,

AT this late hour of the day, I do not think that the duty which I owe the public can require me to detain you any considerable time in reply to the observations of my Learned Friend.

Gentlemen, my Learned Friend has addressed you with great ability ; and unquestionably with

great but guarded zeal, on behalf of his Clients ;— this his duty called upon him to do ; for certainly the best exertion of his great abilities was due to them. On the other hand, your attention is now to be occupied by a person who must address you upon principles which forbid him to have any zeal upon the subject.

The Attorney General of the country, as it appears to me, has a public duty to execute, in reference to which he ought to conceive, that he has properly executed that duty, if he has brought a fit and proper accusation before a Jury, and has proceeded to the length of honestly and fairly examining the several circumstances given in evidence in support of, and in answer to, that accusation ; always recollecting that the Jury will finally hear, from that wisdom which cannot mislead them, the true inferences that will arise upon facts which have been given in evidence on both sides. They will hear it from a person unquestionably less prejudiced than I can be (though I have endeavoured as much as possible to guard myself against any prejudice), because it belongs to the mind of man to be influenced by circumstances, which one's duty as a prosecutor obliges one to look at a little anxiously.

Gentlemen, having been charged with the duty of laying this important case before you, I have not the least doubt but you will discharge the duty which is now imposed upon you with a full and conscientious regard to justice ; and I dismiss here all the

observations my Learned Friend has made upon the high rank and situation of Lord Thanet, upon the respectable situation in his profession of Mr. Fergusson, and of the situation of Mr. O'Brien; because it is quite enough for me, according to my sense of duty, to say this, that, as a Jury sworn to make a true deliverance, you are not to convict any of them, whatever rank or situation belongs to them, unless you are conscientiously satisfied that they are guilty. You will deliver the same verdict that you would between the King and Defendants of any other description.

Gentlemen, what has fallen from the last witness obliges me to take the character of the proceeding which gives rise to the cause, from his friend; who, when he was addressing you, in the course of this afternoon, said, and truly said, that such a proceeding in a Court of Justice, which the last witness represented as an idle panic, most loudly called for the interposition of the law. That witness may have represented those transactions, as I have no doubt he did, as it seemed just to him to represent them. Certainly I was not personally present; but I was within hearing, and I can say that that gentleman is a man of stronger nerves than any other man in this country, if the representation he has given of this scene is a true one. By a true one, I do not mean that it is not one that the gentleman believes to be true; but the evidence of Mr. Justice Heath gives it a character which I believe every man

in the county of Kent who was present would give it, namely, that it was a proceeding utterly inconsistent with the safe administration of justice; that it was attended with a degree of indecency and tumult that was never witnessed in a Court of Justice before, and I trust never will be witnessed in a Court of Justice again.

Gentlemen, having no anxiety about the fate of this or any other cause, except so far as it is fit for me to have an anxiety founded upon the public interests, whenever this cause comes to its conclusion, I think the Noble Peer, the Defendant, who holds a situation high in this country, ought to join with all his fellow-subjects in thankfully acknowledging, that the Attorney General, having reasonable accusing evidence to lay before a Jury (whether it is satisfactory to their minds, is another consideration), should show to the country, that transactions of this sort shall not be carried on, without being brought under the notice of Court of Justice.

Gentlemen, accusations of all sorts are tried in this country with great propriety; but if you acquit a man of treason, is a man to start up and say, that the public are to be indignant, because another warrant has been issued against him? I remember in this very Court, in the last cause that was tried here at Bar, my Lord exerted himself with great vigour, by taking immediate notice of such an insult as was then offered to the Court. My Learned Friend says, why did not the Judges, who were

present, do their part, by taking notice of the fact at the moment? I will give the answer to that:— The Judges of the country are but men. Although they are placed in high, judicial, and honourable situations, yet they are placed in situations in which they are to see that their conduct is not only the best that they can pursue, but, when they proceed to acts of punishment, that their conduct is perfectly adapted to the subject with which they are dealing. If the five Judges upon the Bench had seen this as an idle panic, perhaps those Judges would have treated it as an idle panic. But how does Mr. Justice Heath, upon whom my Learned Friend relies so much—how does he mention the scene that was passing? He says that he never witnessed such a scene before.—My Learned Friend says, I might have called another Learned Judge as a witness; but when I call witnesses who are above all suspicion, men as honourable as any men in this country, to state to you all that that Learned Judge would have had to state to you, I think I shall have acted neither unfitly for the public, or the Defendants. But with reference to that conversation (upon which I must farther observe by and by) that has been stated by Mr. Solicitor General and by Mr. Abbot, to have passed between Mr. Justice Lawrence and Lord Thanet, I should be glad to know, what foundation there is, for the reasoning of my Learned Friend, that Mr. Justice Lawrence ought to have committed or attached Lord Thanet. 1

think I am entitled, under the circumstances of the evidence in this case, to represent him as perfectly ignorant of those causes which occasioned so much confusion in the Court.

· *Mr. Erskine.* I never meant to say so.

· *Mr. Attorney General.* My Learned Friend certainly did not state it exactly in these words ; but he will, I am sure, excuse me for putting him in mind of the expression he made use of, and I shall now endeavour to repeat the very words he used : " Mr. " Justice Lawrence, instead of asking Lord Thanet " to do him a kindness, should have attached him."

My Learned Friend will not, I am sure, interrupt me again ; for when I take notice of any thing that is said in so able a defence, I do not mean to lay it down that Counsel are to be responsible for every expression that hastily falls from them ; but expressions may have an application which I feel it my duty to remove ; and I only wish to set right one of the most respectable, and indeed all those respectable characters who presided on the Bench upon that day. I shall, therefore, say no more upon that subject.

Gentlemen, the question is now before you ; and I am happy to have the testimony of my Learned Friend, that, taking this proceeding as a mere proceeding of accusation, it is a highly proper one ; and when I state that, I mean to state merely the satisfaction I feel in the concurrence of his opinion with my own judgment.

Gentlemen, having said thus much, give me leave to concur most fully in all that my Learned Friend says, with respect to the beneficial effects of a lenient administration of the law, but not so lenient as to make the law ineffectual.

Gentlemen, it was hinted to me, before my Learned Friend began his address to you, that, with respect to two of the Defendants, it might be consistent with the interests of justice, that the trial should end there; and why did I consent to that? There was evidence to go to the Jury, as against Mr. Thompson; I admit, not evidence to convict him, not evidence, perhaps, with respect to his identity—but with respect to Mr. Gunter Browne, there was much more considerable evidence to go to you, subject still to the question of identity—But I know this, that the great interests of public justice are better satisfied, by not pressing for conviction, even when you *can*, perhaps, obtain it, if you think there are doubts whether or not you *ought* to obtain it.

Gentlemen, another circumstance is, that I thought it due particularly to one Defendant, with respect to whom I think this the clearest case, Mr. O'Brien. I wished to give him the benefit of Mr. Browne's and Mr. Thompson's evidence, if he thought proper to call them, with respect to some material circumstances.

Gentlemen, attend to what I am now stating.—When Mr. Sheridan is asked, whether, from the

circumstances that fell within his observation, he believes that Lord Thanet and Mr. Fergusson meant to favour the escape of Mr. O'Connor? he says: "From the facts that fell within my observation, I answer it in the negative." So I say in this case, it is not merely (for the rules of evidence permit one so to state), it is not merely from what *does* appear, that a Jury is to judge, but also from that which does *not* appear. Now see what is the case on the part of the Crown, with respect to Mr. O'Brien. In the first place, you have the evidence of a most honourable person, Mr. Serjeant Shepherd. My Learned Friend says, that you, Gentlemen of the Jury, are not to attend to general questions, such as, "Did a person appear to do so and so?" but you are to have the facts as the grounds upon which that appearance is inferred. That proposition is to be carried this length, that, as far as the nature of the transaction will admit, instead of giving the impression of your mind, as collected from the circumstances, you shall give the circumstances which have created that impression. I am sure his Lordship will remember, that in the case of Kyd Wake, who was tried for that detestable riot with respect to the King's person, a question was put, "Did he appear to be active in the riot?" and the Jury concluded that which they did conclude, upon that circumstance; recollecting that the nature of the transaction was such, that they must be content with such an answer. And indeed my Learned

Friends themselves put the question to Mr. Smith, and Mr. Warren, respectable witnesses unquestionably: "Did they (the Defendants) appear to encourage the riots?" But permit me to say, it did not rest so with Mr. Serjeant Shepherd; for he told you, he wished to give you the evidence upon which he formed his opinion. Gentlemen, you will next observe, that, giving Lord Thanet all the benefit that might arise upon this statute of 14 Geo. III. (upon which I shall say a word by and by), can Mr. O'Brien allege any thing of that kind? Rivett has told you distinctly (and so it turns out from Mr. Sheridan's evidence), that there was a rumour of a warrant, which created so much indignation; Mr. Sheridan admits, that there was that rumour, but Mr. O'Brien did not choose to rely upon that; he wanted to know how the truth of the rumour was; and accordingly, in the presence of Mr. Thompson, a member of parliament, he did make inquiries of Rivett, and coming to him, as Rivett relates, he, Mr. O'Brien, proposed a bet; he says, that Mr. O'Brien then went back again to where Mr. O'Connor was; there was some conversation between them, and when the verdict is brought in Mr. O'Connor attempts to escape. Now, I ask you, as honest Jurymen, if this is not true, why is it not contradicted; and if it is true, is it possible to acquit Mr. O'Brien?

Now, with respect to the case of my Lord Thanet and the case of Mr. Fergusson, Gentlemen, I de-

clare to you most solemnly, that I respect the high situation of the one, as I respect the professional situation of the other ; but in this case, Gentlemen, the question, and the only question, is, " Did they " make a riot ?" I desire that the question may be put upon its true merits. My Learned Friend says, " It is a most extraordinary thing, that in " such a case as this, stating that there was a general " riot, we have not been able to fix the name of any " other rioter with these five Defendants." Has my Learned Friend denied that this was a general riot ? Has my Learned Friend denied that it was a very serious riot, affecting a great variety of persons ? Now, though he is bound to admit the existence of a riot, my Learned Friend is just as much at a loss to find the names of the other persons as I am ; and why ? because the circumstances attending the transaction are such, that, if you will not attend to the conduct of the few individuals who have been pointed out, it is not in the nature of things, that you should bring any man to punishment, in such a case. Then my Learned Friend says, " What motive could Lord Thanet have ?" Mr. O'Connor, who has been represented as an extremely judicious man upon some occasions, was certainly so foolish, as to think such a project as this might have been practicable ; but is it in fact imputed to these persons, that they meant to turn Mr. O'Connor loose, in order to subvert the constitution of this country ? (for so my Learned Friend

states it;) and to do all this mischief which he is pleased to represent to you, must have been the consequence of Mr. O'Connor's escape. He seems to have forgot, that all I meant to impute (for aught I know, there may be men in the country who know more of it than I do), that all I am charging upon these Defendants is, that they meant to rescue Mr. O'Connor from any farther demand that Justice might have upon him. Whether Mr. O'Connor was immediately to take himself out of this country, into a situation in which he could do no mischief, or whether he was to remain in this country to do mischief, is a question with which I have no business.—I have no necessity either to impute to the Noble Lord or the Learned Gentleman, any particular knowledge or intention upon that subject. Then my Learned Friend says, “ Do you “ think persons in the situation in which these two “ Defendants are (I mean Lord Thanet and Mr. “ Fergusson), would further such a purpose as “ this?” Why, Gentlemen, if I am to give an answer to this question, I am bound (for I would not have brought this prosecution, if I had not thought it a fit question for the decision of a Jury) to speak out plainly upon the subject; and I say, fairly, that if any man had asked me before this trial was over, whether Mr. Fergusson and Lord Thanet, having heard the particulars of the evidence, would not have removed to situations where they could not have been implicated in this charge, I

should have thought the imprudence of doing otherwise so great, that it could not have happened. Mr. Fergusson knew all the particulars of the evidence, and so did Lord Thanet, because he heard the evidence summed up, and I cannot help feeling here some degree of surprise, when the question was put to me, upon what was probable or what was improbable, after hearing the evidence upon that trial.

Gentlemen, that there was a riot, is clear beyond all doubt. Now let us see how it is occasioned:— Mr. O'Brien knew of this rumour, at the time the application was made to the Court, by Rivett and Fugion. He was aware, that Mr. O'Connor was not discharged. He learned, and Lord Thanet learned, and I believe nobody doubts the fact, that every body learned this circumstance, not only that he was not then to be discharged (with reference to which I am happy to find that my Learned Friend and I agree upon the point of law), not only that he was not then to be discharged, but it was publicly taught to every body in Court, what was the reason and what the cause for which his discharge was to be withheld from him. And here, without commenting upon that measure, which is supposed to have raised so much indignation, I take leave to say most confidently, that it does not belong to any person, of any rank or situation whatever, to interpose in the execution of a warrant, upon his notion whether the magistrate has acted right or wrong in

TRIAL OF THE EARL OF THANET, &c.

granting it.—It is granted, and must be acted upon.—If the magistrate has acted improperly, the law of the country is not so feeble, as not to be able to reach the misconduct of the magistrate. If every man is to judge in such a case, surely the country is in a situation most embarrassing, most difficult, and most awful (for, remember, if men will take the law into their own hands where there are verdicts of Acquittal, they may where there are verdicts of Guilty). Well, then, the parties having distinctly learned, that there was a warrant, and having been authoritatively told, that this warrant having issued, Mr. O'Connor was not to be discharged, I shall call your attention to what I take to be the few circumstances that must decide this case:—Gentlemen, if you please I will put it so, not to give Rivett any credit, if, upon any other part of the case, he is contradicted; but I should do that with great reluctance, till I am satisfied that he is not worthy of credit. But I will say this, that you may reject the whole of the evidence of Rivett, with respect to Lord Thanet and Mr. Fergusson, out of the case, and say, whether out of the negative evidence given on the other side, you can get rid of the facts sworn and deposed to by persons whose characters are out of the reach of the breath of suspicion.

In the first place, with respect to the evidence of somebody, whose name I forget, upon the trial at Maidstone, a witness was asked, whether Mr. O'Connor wished to favour an invasion of Ireland?

he said, Quite the contrary.—So here, a witness when he was asked, whether Mr. Fergusson appeared to be favourable to this rescue, he said, “ Quite the contrary.” This was a much stronger negation than that of the Maidstone witness ; but upon being asked, what was the circumstance from which he inferred, that Mr. Fergusson’s demeanour was quite the contrary ? he says, he complained of the Bow Street Officers’ coming forward. Now, Mr. Fergusson must have known them to be Bow Street Officers, because he was present when they were examined ; and being a gentleman who wears the robe that I wear, he could not but understand, that they were not to be disturbed, *because* they were Officers. The great proof of his demeanour then being quite the contrary, is, that he makes a complaint of these persons standing between the Prisoner and the Jury ; whether the fact was so, or not, I do not know. Mr. Garrow says, he apprehends, from the state of the Court, it could not be at that period of the trial. Then what is the answer to that ? I will put it in plain intelligible words :— If Mr. Fergusson had been misled, by reading the statute 14 Geo. III. which says, “ that Gaolers “ shall not detain prisoners for their fees, but that “ they shall be discharged ;” if he had not found out the difference between a verdict of Not Guilty, and that judgment which authorizes a man to go without paying his fees ; if it had not occurred to him, that, when this discharge is given, detainers may be lodged

in civil suits, or for other felonies, I hope in God we are not so revolutionized as to contend, that a man shall not be charged with two treasons, as well as with two felonies. Upon Mr. Fergusson being told, that there was this warrant (the warrant being publicly exhibited), it is not for me to examine, what it became Mr. Fergusson to do, because of that he is himself the judge. But I say, if, after he was apprized of that, he took any part, not by positive actual conduct, but by encouragement, capable of being exhibited to the understandings, and impressed upon the minds of the Jury, as such (however differently persons may tell their stories, with reference to certain facts, in which they do not agree, however strongly individuals may speak with respect to facts that they did not observe, however negatively they may say they did not see this or that, and they do not think it possible, and so forth); if there are positive circumstances sworn, which amount to acts of encouragement, which a Jury can feel and act upon, they must look to that positive evidence; and if, in this case, Gentlemen, you find that positive evidence existing, however unwilling you may be to find such a verdict, you are sworn, upon your oaths, to give a verdict according to law; and you must find a verdict, therefore, in support of this Information.

Gentlemen, I will not go into a detail of the evidence, which you will hear from his Lordship; but with reference to Lord Thanet and Mr. Fergusson,

I cannot part with the evidence given by Mr. Solicitor General; but I shall first make this observation upon the evidence of Mr. Serjeant Shepherd, to whose credit, honour, and accuracy, we all do justice, that where that evidence presses upon Mr. O'Brien, he says, that "Mr. O'Brien having turned "round and looked up at Mr. O'Connor, it made "an impression upon his mind;" and also that, "as far as he observed, Lord Thanet was defending "himself." He judges, therefore, of appearances, both with reference to Lord Thanet and with reference to Mr. O'Brien; and what he says of the appearances with reference to Mr. O'Brien certainly throws a great degree of credit upon his accuracy when he speaks with respect to Lord Thanet. The same credit is due, I take it, to Mr. Solicitor General; and you will have the goodness also to attend to the evidence of Mr. Hussey; for if you believe what he states, that when the man was pressing forward to execute the warrant, Lord Thanet inclined towards the Bar, and put his person in the way; if that fact is proved to your satisfaction, Lord Thanet is guilty upon this record. And if other facts are proved against Lord Thanet, and similar facts are proved against Mr. Fergusson, you must decide upon all the evidence, and not from what other men did *not* see or observe; you are not to decide upon the eloquence of my Learned Friend, but upon the oaths of persons who depose positively to facts. Then my Learned Friend made an observation upon

the evidence of Mr. Solicitor General, with reference to whom, as a moral character, I say nothing, because he is above all praise that I can bestow upon him: I have no doubt that it was an extremely painful thing for him to give his evidence this day; but his evidence is extremely material, because he speaks to the circumstance of Mr. Fergusson crying out that Mr. O'Connor was discharged. He tells you the pains he took with his brother in the profession to tell him that he was not discharged; and he speaks to the warrant being produced, and, therefore, there was a public notice, that there were further demands of justice upon Mr. O'Connor. He states upon his oath, that he did most distinctly and cautiously attend to the conduct of Mr. Fergusson and Mr. O'Connor; and then he says this; "I fixed my eye upon O'Connor, and I observed Mr. Fergusson, and other persons whom I did not know, encouraging Mr. O'Connor to go over the Bar." Encouraging is a general word undoubtedly; but it is a word which expresses the impression which facts falling under his eye had made upon his mind; and when he was asked what he meant by encouragement? he describes it to have been by his actions. But he not only gives his evidence in this way as to that particular fact, but he gives it also with a caution, which entitles it to the same degree of credit which Mr. Serjeant Shepherd's evidence derives from its accuracy; for when he comes to speak of a circumstance, with reference

to which he is not certain, he tells you, "Mr. O'Connor jumped over the Bar, and Mr. Fer-gusson turned himself round and appeared to me to follow Mr. O'Connor; but I cannot say that he did." He qualifies that apprehension in his mind, by telling you that he may be mistaken, and then he gives you the reason why he doubts whether that apprehension was or was not justly founded; and he finally states in his evidence a circumstance respecting Lord Thanet, which I think will deserve a great deal of your consideration. Gentlemen, a Learned Friend of mine behind me, Mr. Abbott, has told you, that he heard Lord Thanet express himself in the manner which he has described, and I trust I shall not be told that the manner of an expression is not evidence of the import of the mind of the man from whose mouth the expression flows. He states to you the circumstance of Mr. Sheridan's conversation with the Learned Judge, and he was struck with the extreme difference of the manner in which Mr. Sheridan expressed himself to that Learned Judge, from the manner in which Lord Thanet expressed himself. Am I to be surprised that Lord Thanet could be engaged in such a project, if I can believe, that he, a Peer of the realm, made use of such language to a Judge of the country, that "he thought it fair that he, the Prince, should have a run for it?"—a run, for what? why, a run to elude justice!—a run to get out of the hands of a court of justice—a run to

prevent being brought to justice ; and this is the sentiment of a Peer of the realm—" he thought it " fair to have a run for it." And, considering it to be fair, he acted upon that apprehension, as far as he had the power of acting. This is a circumstance requiring your anxious consideration. Whether this Noble Peer struck Rivett first, which I do not find Rivett say that he did, is of no importance. These men have a certain temper and degree of spirit about them, which might, perhaps, induce them to thrash a Peer more than any body else, if they felt themselves ill-treated ; but Mr. Rivett may take this advice of me—I hope, in future, he will not use such treatment if he can avoid it. But what presses upon my mind is, that if Lord Thanet, treated in the manner he was by Rivett, had no connexion with this project of rescue ; if he had not, either from the circumstances that fell under Mr. Sheridan's observation, or from other circumstances, manifested that he meant there should be a rescue, is it the conduct of a man of considerable situation—is it the conduct of a man of common sense, instead of making a serious complaint upon the subject, instead of stating, as he naturally would have done, " this project of rescuing a man from the " hands of justice, is that species of project, which, " in my situation, it must be known I must feel to " be inconsistent with propriety, duty, and honour, " to have embarked in ?" On the contrary, he is perfectly neutral ; no complaint is made upon the

subject. It appears to me, that if I had been struck two or three times by that Officer, the manner in which I would have acted upon that occasion would certainly not have been to have immediately stated that "it was fair the Prisoner should have a run "for it," but to have made some application to have those punished of whose conduct I had a right to complain. Now, this evidence of the Solicitor General is also confirmed by Mr. Abbott, and by Mr. Serjeant Shepherd, who states to you what Lord Thanet did; and he states it to you, that he was not holding up his hands for the purpose of rescuing himself from the pressure of the mob, but was holding up his hands to defend himself against those persons who were pursuing Mr. O'Connor; and he gives his evidence in such a way, that you can have no doubt as to the personal conduct of Lord Thanet. Then when you have heard this evidence on the part of the prosecution, I mean the evidence that goes to positive facts, it will be for you to decide whether they are not all reconcilable with the negative evidence given on the part of the Defendants. I have not gone into the whole of the evidence, because I feel that my Lord has a painful and an anxious duty to perform, and whatever your verdict may be, I am confident and sure that this prosecution will have been very beneficial to the country. I hope and trust that I shall never see such another; but whenever I see an occasion which calls for it,

whilst I hold the situation which I have the honour to fill, I will not fail to institute it.

Gentlemen, having said thus much, and having endeavoured to discharge myself of my duty, you will be good enough to say what is due as between the Public and the Defendants.

LORD KENYON'S CHARGE TO THE JURY.

GENTLEMEN OF THE JURY,

If, consistently with my own sense of my duty, or consistently with the public expectations—consistently with the expectations of the Bar on the one side and the other, and with your expectations—I could relieve myself from going through, in detail, all the particulars of this case, after considerable bodily and mental exertions already, I should certainly save myself from a great deal of trouble. But I will not shrink from the discharge of my duty, though it may be attended with labour and pain.

This is a case of the first importance. I do not remember any case that ever happened in my time, in the shape of a misdemeanor, of more importance

to the Public; and it has been conducted in the most solemn manner. It is brought before the whole Court, assisted by a Jury of Gentlemen from the county of Kent, taken from the highest orders of the people, and whose educations and stations in the world qualify them to decide causes of such importance. It is usual, in causes of this kind, where there is a number of Defendants, and where the evidence does not extend sufficiently to them all, to submit to the Jury, before the end of the cause, whether those upon whom the evidence does not attach, ought not to be acquitted, in order that the other Defendants may avail themselves of their evidence, if they shall think proper. It was with a view to that very state of the question that I took the liberty to submit to you, that two of the Defendants ought to be acquitted before the other Defendants produced their evidence; and I did it with a view that the others might, if they thought fit, appeal to their evidence, to show, on the rest of the case, what the real state and justice of it was.

In dispensing the criminal justice of the country, we have sometimes an arduous task to perform. It is not a pleasant thing, most certainly, to condemn any one of our fellow-creatures to punishment: but those who are entrusted with the administration of the criminal justice of a country, must summon up their fortitude, and render justice to the Public, as well as justice tempered with mercy to the indi-

vidual. I have the authority of Lord Hale, one of the greatest and best men that ever lived, for saying, that Juries are not to overlook the evidence—that they are not to forget the truth, and to give way to false mercy ; but, without looking to the right hand or the left, they are to weigh the evidence on both sides, and then, according to the best of their judgment and understanding, to do justice to the Public, as well as to the Defendants.

Before I proceed to sum up the evidence, I shall only make one other observation, which was made by Mr. Whitbread in giving his evidence, the tone of whose voice I never heard before. Having gone through his evidence, he gave us this *legacy*, as a clue to direct us in the decision of this case—“ that, “ in a scene of so much confusion, there are many “ things which must escape the observation of every “ individual.” Having stated thus much to you, I will now proceed to sum up the evidence ; and when I have done that, I shall make some few observations on it. [*His Lordship here summed up the evidence on both sides, and then proceeded as follows :]*

I now proceed to make a few observations of my own. There is no occasion to give you my authority, or the authority of those who hear me, upon this point. There is no doubt that the Prisoner was not entitled to be discharged ; for, when a verdict of acquittal is entered, a Judge may order a party to be detained, and compel him to answer

other charges that may have been brought against him. On this point there is no difference of opinion ; it is not even disputed at the Bar ; the case is clear ; and there is no doubt upon earth that a Prisoner, in many cases, though he may be acquitted, as in the case of an appeal of murder, cannot be discharged though he be acquitted of the murder.

I have stated the evidence on the one side and the other ; and although there is strong contradictory evidence, yet I think there is a great deal of evidence which goes in support of the charge. There were some observations made by the Learned Counsel for the Defendants, which, perhaps, were not altogether warranted. Counsel are frequently induced, and they are justified in taking the most favourable view of their Clients' case ; and it is not unfair to pass over any piece of evidence they find difficult to deal with, provided they cite, fairly and correctly, those parts of the evidence they comment upon. The Learned Counsel for the Defendants, in his remarks on the evidence, totally forgot the evidence of Mr. Parker. If his evidence is to be believed, and I know no reason why it is not, he certainly gave important evidence in support of this charge—that the Defendants evidently appeared to be attempting to stop the Officers, and assisting the escape of Mr. O'Connor. The Learned Counsel for the Defendants did not choose to deal with this evidence, though he conducted the cause with all possible discretion, abilities, and eloquence. As I

have before observed, there is apparently a great deal of contradiction in this cause. I must again state the observation of Mr. Whitbread, and which was obvious if he had not made it, that, "in such a scene of tumult and confusion, many things must pass which escape the observation of every individual." But there is no doubt of one thing —one thing is clear: if Rivett had not the scuffle which he swears he had with Mr. Fergusson and my Lord Thanet, and if he did not wrench a stick out of Mr. Fergusson's hand, he is palpably forsworn, and grossly perjured. For him there is no excuse in the world. What motive he might have, I do not know: he has no interest; and in weighing the testimony of witnesses, I cannot consider the rank of a person, nor his station. It is clear, if he has not told the truth, he is guilty of perjury. In this scene of tumult, men's minds must have been greatly distracted. It is for you to say what degree of credit you will give to all the witnesses. These are the observations I have to make; and I should retire from my duty if I had not made them to you.

It has been said, in the course of this cause, that it was against all probability. Was it probable that an attempt was meditated to effect the escape of a person such as Mr. O'Connor, in a Court of Justice, in a large town, and in a public part of that town? Was it probable that this man himself should attempt that, which, Mr. Sheridan said, appeared to

him to be an act of madness? Is it most likely that he should have attempted this with hopes of success, with or without assistance? This is matter for your consideration. It is very likely you have forestalled all the observations I have made; but still it was not less my duty to make them. The whole of this case is for your decision. It is a case in which the interests of the individuals, as well as of the public, are highly embarked.

At eleven o'clock at night the Jury retired; and after being out about an hour, they returned with the following verdict:

THE EARL OF THANET,
ROBERT FERGUSSON, Esq. } *Guilty.*
DENNIS O'BRIEN, Esq. *Not Guilty.*

The Reader being now possessed of the arguments of the Counsel, the whole of the evidence, and the sentiments of the Court upon both, the Editor refrains from any observations of his own upon the verdict; but he feels that he owes it to the Earl of Thanet and Mr. Fergusson to add what

was said by themselves in their own exculpation when brought up to receive judgment; and, above all, their solemn oaths in support of their innocence. It was certainly a great indulgence in the Court to suffer their affidavits to be recorded, because, strictly speaking, affidavits that cannot, by the practice of the Court, be received by the Judges in mitigation of punishment, as opposing the truth of the verdict, cannot be permitted to be filed. This was, however, permitted upon the present occasion.

On Friday, the 3d of May, Mr. Attorney General prayed the judgment of the Court.

Lord Kenyon—(*to Mr. Erskine*).—Have you any thing to say for the two persons convicted?

Mr. Erskine. The cause having been tried at Bar, your Lordships are already apprized of every thing I could have to offer. I believe Lord Thanet and Mr. Fergusson wish to say something to your Lordships.

LORD THANET:—

My Lords, before the sentence is pronounced, I beg leave to address a few words to the Court:—not

for the purpose of impeaching the veracity of the witnesses for the prosecution, or of arraigning the propriety of the verdict: on those points I shall say nothing. What I mean to submit to the Court is, a short, distinct narrative of the facts, as far as I was concerned in them.

I attended the trial at Maidstone in consequence of a subpœna. When I had given my evidence, I retired from the Court, without any intention of returning, until I was particularly requested to be present at the defence made by Mr. Dallas, the Prisoners' Counsel. At that time I had never heard of the existence of a warrant against Mr. O'Connor, nor of any design to secure his person if he should be acquitted. The place I sat in was that which Mr. Dallas had quitted, when he removed to one more convenient for addressing the Jury. While sitting there, I heard, for the first time, from Mr. Plummer, that he had reason to believe there was a warrant to detain Mr. O'Connor. When the verdict was pronounced, I went into the Solicitors' box, to shake hands with Mr. O'Connor, which I did without even speaking to him. Many others pressed forwards, apparently for the same purpose. Upon a call for silence and order from the Bench, or from one of the Officers of the Court, I immediately sat down on the seat under that part of the Dock where Mr. O'Connor stood. At that period some confusion arose, from several persons attempting to get towards him, one of whom said he had a warrant to

apprehend him, for which he appeared to me to be reprimanded by Mr. Justice Buller, in some few words, which I did not distinctly hear. The moment the Judge had passed sentence on O'Coigly, a most violent pushing began from the farther end of the seat on which I sat. From the situation I was in, I did not perceive that Mr. O'Connor was attempting to escape. He was a good deal above me, and I sat with my back to him. I continued sitting in my place, until several persons on the same seat were struck, among whom, I imagine Mr. Gunter Browne was one, from the complaint he afterwards made of ill-treatment, but whom I never saw before or since to my knowledge. I then began to feel the danger I was in; but the tumult increased about me so rapidly, that I was unable to get over the railing before me. I stood up, however, and used all the efforts in my power to go towards the Judges, as to a place of safety; but at that moment, by some person or other, I was borne down on the table, where a man (I afterwards found was Rivett) struck at me several times with a stick, which I warded off, as well as I was able, with a small walking-stick. Rivett, as he struck me, charged me with striking him first, which I denied, and called out to him, as loud as I could, that I had not struck him.

I have now detailed, as clearly as I am able, my situation and conduct, during the disturbance; and I do most solemnly declare on my word of honour,

which I have been always taught to consider as equally sacred with the obligation of an oath, and am ready to confirm by my oath if I am permitted to do so, that I never did any one act but what was strictly in defence of my person. It is not at all unlikely, that, in such a scene of confusion, I might have pushed others, who pressed against me, to save myself from being thrown down; but I most solemnly deny that I lifted my hand or stick offensively, or used any kind of violence to any person. I declare upon my word of honour, that I knew nothing of the existence of a warrant to detain Mr. O'Connor, until I heard it from Mr. Plummer; and that, even then, it never entered into my mind that it was to be served upon him in the Court, until some person called out that he had a warrant. I declare upon my word of honour, that the obstruction which the Officers met with on the seat where I sat, was perfectly unintentional on my part, and was solely owing to the situation I was in:—that I did nothing offensively, but, on the contrary, was violently attacked and assaulted; and that I retired from the scene of confusion as soon as I was able. And, finally, I do most solemnly declare upon my word of honour, that I did not concert with any person the rescue of Mr. O'Connor, by violence, or by any other means whatsoever; that I had no idea of doing it alone; and that I was not privy to any consultation of other persons, either for the purpose of rescuing Mr. O'Connor out of the custody of the

Court, or of preventing the execution of the warrant.

As I hold myself bound to state fairly, not only what I did, but what I said, as far as it is in my power to recollect what passed, with the agitation of such a tumult on my mind, I acknowledge that some words may have escaped me, which I ought not to have spoken. I am charged with having said, "that I thought it fair that he should have a run for it." I will not dispute about the exact words. I confess they were extremely inconsiderate. Some allowance, however, I think, may be made for the instant feelings of a man so ill treated as I had been.

My Lords, I am not sanguine enough to expect any immediate advantage from these declarations. I know they will not avail me against the verdict: but the truth of them will not be suspected by those who know me; and hereafter, when all the circumstances of this transaction shall be coolly reconsidered, I am confident they will have weight with the Public.

My Lord, I have an affidavit prepared, if your Lordship will accept of it.

Lord Kenyon. To the same effect?

Lord Thanet. Yes, my Lord.

Lord Kenyon. We cannot here receive an affidavit, against the verdict of a Jury: but I believe it may be ordered to be filed; I believe there is no objection to that.

Mr. Erskine. I believe there is not, my Lord.
It was ordered to be filed.

AFFIDAVIT.

The Defendant, the Earl of Thanet, maketh oath, and saith, that he attended at the Special Commission held at Maidstone, in the county of Kent, for the trial of Arthur O'Connor, Esq. and others, for high treason, in consequence of a sub-pœna served upon him, to give evidence on behalf of the said Arthur O'Connor, and which was the sole cause of his attending at the said trial; and he saith, that after he had given his evidence, he retired from the Court, and had no intention of returning thereto, till he was particularly pressed to be present to hear the defence of the Counsel for the Prisoners, merely as a matter of attention and countenance to the said Arthur O'Connor, who was his acquaintance; and he further saith, that at that time he had no knowledge whatever of the existence of any warrant against the said Arthur O'Connor, nor of any intention of securing his person, if he should be acquitted on the Indictment. And this Deponent further saith, that he sat in the place which Mr. Dallas had left, when he went to a more convenient one for the purpose of addressing the Jury; and that, whilst he was sitting there, he for the first time heard from Mr. Plumer, that he had reason to believe there was a warrant to detain Mr,

O'Connor; and this Deponent further saith, that on the verdict's being pronounced, he stept into the Solicitors' seat to shake hands with Mr. O'Connor, which he did without even speaking to him, and without any other motive than that of congratulating him as a friend on his acquittal, at which time many others were coming to the same place where this Deponent was; that upon a call for order and silence from the Bench, or from one of the Officers of the Court, he immediately sat down on the seat under that part of the Dock where Mr. O'Connor stood, and at that period a slight confusion arose from several persons attempting to get towards Mr. O'Connor, one of whom said he had a warrant to apprehend him, for which he appeared to be reprimanded by the Honourable Sir Francis Buller, in a few words which this Deponent did not distinctly hear. And this Deponent further saith, that at the moment the Judge had passed sentence of death on O'Coigly, the most violent pushing began on the seat on which he sat (this Deponent not observing, that Mr. O'Connor was attempting to get away), and he continued sitting in his place till several persons on the same seat were struck, and amongst whom he believes was Mr. Gunter Browne, whom he never before, or since, had seen to his knowledge; and from that moment, this Deponent began to feel the danger he was in, the tumult about him increasing so rapidly, that he was unable to get over the railing before him; that, however, he stood up, and used

all the efforts in his power to go towards the Judges as a place of safety ; but he was instantly pushed down on the table, when a man, whom he has since found was John Rivett, struck at him several times with a stick, which blows he warded off as well as he was able with a small walking-stick, the said Rivett charging this Deponent, as he struck at him, with striking him first, which this Deponent denied, calling out at the same time as loud as he could, that he had not struck him. And this Deponent further saith, that he never did, during the said disturbance, any one act, but what was strictly in the defence of his person, though he admits that he might have pushed several persons that pushed against him, to prevent his being thrown down, but that he did not lift hand or stick, or use any violence whatsoever, to the said John Rivett, or any other person. And this Deponent positively saith, that he was not privy to, or acquainted with, the existence of any warrant to detain the said Arthur O'Connor, until he heard of such warrant from Mr. Plummer, as before set forth ; and that it never entered into his mind that it was to be served upon him in Court, until the person before mentioned called out that he had a warrant. And this Deponent further saith, that the obstruction the Officer met with on the seat on which this Deponent sat, was perfectly unintentional on his part, and solely owing to the unfortunate situation in which he had accidentally placed himself, as the seat was so narrow that it was

with great difficulty any person could pass that way. And this Deponent further saith, that he did nothing with intention to offend the Court, or any other person ; but, on the contrary, he was violently attacked and assaulted ; and that he retired from the scene of confusion as soon as he was able. And this Deponent further saith, that he doth most solemnly upon his oath declare, that he had not consulted, concerted, or advised with any other person or persons whomsoever, to favour the escape of the said Arthur O'Connor, either by violence, or any other means whatsoever ; and that he had no idea of doing it alone ; and that he was not privy to the consultation or agreement of any other person or persons, either for the purpose of rescuing the said Arthur O'Connor out of the custody he then was in, or preventing the execution of any other warrant upon him.

THANET.

Sworn in Court the 3d of May 1799.

By the Court.

MR. FERGUSSON:—

My Lords, I have nothing to offer to your Lordships, either with respect to the charge itself, the manner in which it was proved, or with respect to

my own peculiar situation, upon which your Lordships' judgment, whatever it may be, must make a deep and lasting impression. I cannot so soon have forgotten the manner in which these topics were urged in your Lordships' presence, in the course of that defence which was made for me by the most zealous of friends, the most able and eloquent of men.

I gladly, however, avail myself of the privilege of addressing your Lordships, because it enables me thus publicly to say, that, whatever be the political opinions which some may choose to ascribe to me,—whatever be those which I do in fact entertain,—opinions which I believe to be strictly consonant to the best principles of the law and constitution of my country ;—but whatever be those opinions,—whatever, even, my Lord, be the appearances against me, standing where I now do,—still I can with truth and sincerity declare, that there is no man who hears me, who is more deeply impressed with a sense of the respect which is due to the administration of justice, of the strict obedience which should be paid to the proceedings of its Courts, and of the honour and reverence which should ever attend the persons of its Judges. Weak, indeed, must be the opinions, or wicked must be the views, of that man who wishes to degrade the authority of the law ; for, without it, not one of the blessings of society can have security for one moment. My Lords, I can safely acquit myself of this part of the

charge, because my reason, as well as my conscience, tells me, it is the last offence I am capable of committing.

I appear, however, before your Lordships, to receive that judgment which your duty calls upon you to pronounce, in consequence of the verdict of a Jury. That verdict I do not mean to arraign: it was given on contradictory evidence, the value and balance of which it was the peculiar province of the Jury to weigh and to decide.

But if your Lordships' long practice in Courts of Justice shall have shown you the fallibility of human testimony,—if it shall have shown you, still more, the fallibility of human judgment founded upon human testimony, I hope I may meet with your indulgence, if I here make a solemn declaration of that, with respect to which I alone *cannot* be mistaken.

My Lords, upon the occasion which has given rise to these proceedings, I was of Counsel for one of the Prisoners who was tried at Maidstone. I was seated in the place which was allotted for the Counsel for the Prisoners; and being wholly engaged in the discharge of my duty, I solemnly aver, that whatever might be the previous consultations or conversations of others, with respect to the practicability or impracticability of a rescue, I never had even heard the rumour that a fresh warrant was in existence, until after the Jury had retired to consider of their verdict. It was not till after they had

so retired, and very shortly before they returned into Court, that I learned that circumstance. I was in my place, seated where I had been during the greater part of the day, at the moment when the verdict was delivered: and I do most solemnly aver, that from that moment until I was pressed upon by the crowd, I did not stir from that seat. I do further declare, that when I was forced upon the table, I used no violence to any one; that the whole of my endeavours went to allay the ferment, and to remove those of my friends whom I loved and regarded, from the scene of disturbance, in order that they might not be implicated in any charge that might afterwards be brought against those who were the authors of it.

I can, therefore, say, in the presence of this Court, and under the eyes of my countrymen—that which, in the name of my God, I have already sworn—that I am innocent of this charge.

Here Mr. Fergusson put in an Affidavit, which he had previously sworn.

AFFIDAVIT.

Robert Fergusson, of Lincoln's Inn, Esquire, one of the said Defendants, maketh oath, and saith, that he was of Counsel assigned by the Court for John Allen, one of the Prisoners indicted with Arthur O'Connor, for high treason, at a Special Session held at Maidstone, in May last, and that as such

Counsel he was employed in Court during the whole of the day, in the night of which the riot charged in the Information took place; he saith, that he neither knew, or had heard, of any fresh warrant against the said Arthur O'Connor, until the Jury had gone to consider of their verdict, and very shortly before they returned to deliver it. And this Deponent further saith, that he was in the place allotted to him as Counsel, when the Jury returned into Court with their verdict; and that about that time, he complained to the Court of the interruption which was given to its proceedings by the violence of a person who was pressing forward between the Prisoners and the Court; and that upon the complaint of this Deponent, Mr. Justice Buller ordered the said person to be quiet. And this Deponent further saith, that from the time when the Jury returned with their verdict, until after sentence was pronounced, and the disturbance began, the said Deponent remained in his place as Counsel, and did not leave it until compelled by the violence of those who pressed upon him from the bench behind. And this Deponent further saith, that when forced upon the table, he used no violence to any one, but used every means in his power to allay the ferment, and save the Earl of Thanet from the blows of John Rivett, without offering any violence to the said John Rivett. And this Deponent further saith, that he had not, during any part of the disturbance, any stick, sword, or other weapon in his hand, and that

he did not use, or offer, violence to any one. And this Deponent further saith, that he neither attempted to rescue the said Arthur O'Connor, nor did he at any time agree with others to attempt such rescue, nor was he in any way aiding or assisting, nor did he at any time agree with others to aid or assist the said Arthur O'Connor, in any attempt to be made by him to escape.

ROBERT FERGUSSON.

Sworn in Court the 3d day of May 1799.

By the Court.

On the 1st of June, the Court gave judgment:—

The Earl of Thanet was fined a thousand pounds, and imprisoned for a year in the Tower.

Mr. Fergusson an hundred pounds, and imprisoned for the same period in the King's Bench prison.

PROCEEDINGS
OF THE
Friends
TO THE
LIBERTY OF THE PRESS.

PERHAPS no period in the history of our country ever gave rise to a more distinct division of opinion as to the true policy of her state and government, than was occasioned by the phenomenon of the French revolution in its earlier stages, when the following Declaration of the Friends of the Liberty of the Press was delivered and published. By many honest and enlightened persons, independently of the extensive influence of power and patronage, the late Mr. Pitt was considered as the pilot who had weathered its storm; who, by raising a just and critical alarm against French principles, had, in a manner, enlisted the whole people of Great Britain in defence of her established constitution, and who, by a timely and vigorous domestic policy, had disarmed republican sedition through the terrors of criminal justice. By others not less enlightened, this severe system of domestic discipline, and, above all, the enactment of

new and unprecedented laws to enforce it, was condemned, as not only unnecessary, but destructive of the object sought to be attained by it. They considered the supposed alarming fascination of French principles to have been employed only as a pretext for beating down, by force and terror, the efforts of those who sought only a constitutional reform in the representation of the House of Commons, and who sought it, as the safest antidote to republican principles, and the surest deliverance from the crisis of a revolution. They foretold that this unprincipled attempt (as they at least considered it) to subdue the human mind in a free country, by penal proceedings, beyond the temper and spirit of our ancient laws; above all, when such a course was directed against the Press, and pursued under the sanction of the very House of Commons, the desired reformation of which was the grand feature of all the state indictments against the people, would only bring round the evil (if an evil it was) in a more formidable and unmanageable shape, until the House of Commons, for the support of its own dignity, and the safety of its authority, of itself reformed the very abuses which many were punished for intemperately pointing out as fit subjects of reformation. Which of these two opposite opinions was the soundest and best, the Editor disclaims altogether the province of deciding; and he, therefore, refers the Reader to the exordium of the Speech for Mr. John Horne Tooke, from page 1, to page 10, in the present volume; and also to the following extract from the

work of Mr. Erskine on the Causes and Consequences of the War with France, which he published in 1797, in which will be found, from page 11, to page 17, his opinion of the causes for issuing the King's Proclamation of the 21st of May 1792, and of the real state of the public mind at that momentous period. Whether he was justified in those opinions, or in his consequent conduct, every Reader, as throughout the whole of this Publication, is left wholly at liberty to judge for himself.

Extract from a Pamphlet entitled, *A View of the Causes and Consequences of the War with France.*

“ For this purpose of alarm, the honest but irregular zeal of some societies, instituted for the reform of Parliament, furnished a seasonable, but a contemptible pretext ; they had sent congratulations to the French government when it had ceased to be monarchical: in their correspondences through the country, on the abuses and corruptions of the British Constitution, they had unfortunately mixed many ill-timed and extravagant encomiums upon the revolution of France, whilst its practice, for the time, had broke loose from the principles which deserved them ; and, in their just indignation towards the confederacies then forming in Europe, they wrote many severe strictures against their monarchical establishments, from which the mixed principles of our own government were not distinctly or prudently separated.

They wrote besides, as an incitement to the reform of Parliament, many bitter observations upon the defective constitution, and the consequent corruptions of the House of Commons ; some of which, according to the just theory of the law, were unquestionably libels.

“ These irregularities and excesses were, for a considerable length of time, wholly overlooked by Government. Mr. Paine’s works had been extensively and industriously circulated throughout England and Scotland ; the correspondences, which above a year afterwards became the subject of the state trials, had been printed in every newspaper, and sold without question or interruption in every shop in the kingdom ; when a circumstance took place, not calculated, one would imagine, to have occasioned any additional alarm to the country, but which (mixed with the effects on the public from Mr. Burke’s first celebrated publication on the French Revolution) seems to have given rise to the King’s Proclamation, the first act of Government regarding France and her affairs.

“ A few gentlemen, not above fifty in number, and consisting principally of persons of rank, talents, and character, formed themselves into a society, under the name of the Friends of the People. They had observed with concern, as they professed in the published motives of their association, the grossly unequal representation of the people in the House of Commons ; its effects upon the measures

of Government ; but, above all, its apparent tendency to lower the dignity of Parliament, and to deprive it of the opinion of the people. Their avowed object was, therefore, to bring the very cause, which Mr. Pitt had so recently taken the lead in, fairly and respectfully before the House of Commons ; in hopes, as they declared, to tranquillize the agitated part of the public, to restore affection and respect for the legislature, so necessary to secure submission to its authority ; and, by concentrating the views of all reformers to the preservation of our invaluable constitution, to prevent that fermentation of political opinion, which the French Revolution had undoubtedly given rise to, from taking a republican direction in Great Britain *. These were not only the professed objects of this association, but the truth and good faith of them received afterwards the sanction of judicial authority, when their proceedings were brought forward by Government in the course of the state trials.

“ Nevertheless, on the very day that Mr. Grey †, at the desire of this small society, gave notice of his intended motion in the House of Commons, there was an instantaneous movement amongst Ministers, as if a great national conspiracy had been discovered. No act of Government appeared to have been in agitation before that period, although the corre-

* I declare, upon my honour, these were my reasons for becoming a member of that society.

† Now Earl Grey.

spondences before alluded to had, for months, been public and notorious, and there was scarcely an information, even for a libel, upon the file of the Court of King's Bench. Nevertheless, a council was almost immediately held, and His Majesty was advised to issue his royal Proclamation of the 21st of May 1792, to rouse the vigilance and attention of the magistrates throughout the kingdom to the vigorous discharge of their duties.

“ If this had been the only object of the Proclamation, and if it had been followed up by no other proceedings than the suppression of libels, and a coercive respect for the authorities of Parliament, it would have been happy for England ; unfortunately, it seemed to have other objects, which, if as a subject of the country I have no right to condemn, I may at least, with the freedom of history, be now allowed to lament.

“ The Proclamation had unquestionably for its object to spread the alarm against French principles ; and, to do it effectually, all principles were considered as French by His Majesty's Ministers which questioned the infallibility of their own government, or which looked towards the least change in the representation of the people in Parliament.

“ If it had issued, however, under the authority of the British ministry only, it probably could not have produced its important and unfortunate effects. But the Minister, before he advised the measure, had taken care to secure the disunion of the Whig

party, which had hitherto firmly and uniformly opposed both the principles and practice of his administration. To this body I gloried to belong, as I still do to cling even to the weather-beaten pieces of the wreck which remains of it. Neither am I ashamed of the appellation of party, when the phrase is properly understood ; for without parties, cemented by the union of sound principles, evil men and evil principles cannot be successfully resisted. I flatter myself that the people of England will not hastily believe, that I have ever been actuated in my public conduct by interest or ambition.

“ The Whig party, as it has been called, was insignificant indeed from its numbers, and weak from the formidable influence of the Crown in the hands of its adversaries ; but formidable, nevertheless, from illustrious rank, great property, and splendid talents ; still more from an opinion of public integrity, which formed a strong hold upon the minds of the country. I look back with the most heartfelt and dispiriting sorrow to the division of this little phalanx, whose union upon the principles which first bound them together might, in spite of differences of opinion in matters concerning which good men may fairly differ, have preserved the peace of the world, re-animated the forms of our own Constitution, and averted calamities, the end of which I tremble to think of. Reflecting, however, as I do, upon the frailties of human nature, adverting to the deceptions which may be practised upon it, and which

men, by insensible degrees, unconsciously may practise upon themselves ; compelled by candour to keep in view the unexampled crisis of the French Revolution, the horrors which disfigured it, the alarms inseparable from it, but, above all, the dexterous artifices which it furnished to inflame and to mislead ; I wish to draw a veil over the stages which divided statesmen and friends, at the very moment of all others when they ought to have drawn closer together, and when their union might have preserved their country. I shall, therefore, content myself with observing, that before the King's Proclamation was issued, the support of the Duke of Portland had not only probably been secured to it, but the assent of some of the most distinguished persons in the opposition had been well understood to the whole of that system of measures which ended in the war with France.

“ The Proclamation, thus supported, was planted as the only genuine banner of loyalty throughout the kingdom ; *voluntary bodies, to strengthen the executive power by maintaining prosecutions, were every where instituted. Society was rent asunder, and the harmony and freedom of English manners were, for a season, totally destroyed.*”

If, at the period in question, the Press had been visited by no other danger than the legal effects of the King's royal Proclamation, the following proceedings

could certainly never have been promoted by men who understood and respected the Constitution. It is His Majesty's undoubted prerogative to superintend the whole executive magistracy, and to inculcate and command, when he sees fit, the utmost vigilance and exertion in the discharge of its various duties. The danger to the Press was of a very different kind.—

VOLUNTARY SOCIETIES were formed in London, and were spreading, by the contagion of example, into the remotest parts of the kingdom. At the head of them all was the Society for the Protection of Liberty and Property, against Republicans and Levellers, instituted, we have no doubt, or at least supported, by well-intentioned persons, zealous to support the government, and giving credit for the occasion to the Ministers of the Crown; but how soon it assumed a most dangerous partnership with the executive power, utterly repugnant to every principle of the British government, and destructive of the happiness and security of the people, may be judged of by the following letter, from one of its worthiest members, addressed to the Chairman of the Association. This letter, which, being printed and publicly circulated, brought to day the extraordinary proceedings detailed in it, led almost immediately afterwards to the public meetings of the Friends of the Liberty of the Press, at the second of which, Mr. Erskine delivered what was afterwards adopted unanimously as a public Declaration to be printed and circulated throughout the

*kingdom. That Mr. Thomas Law *, the author of the letter, was a member of the Society, reflects honour upon the Institution; that he declined some of the duties which it cast upon him, reflects honour upon himself.*

A Letter to Mr. REEVES, Chairman of the Association for preserving Liberty and Property. By THOMAS LAW, Esq. one of the Committee of that Society.

“ GENTLEMEN,

“ I feel it incumbent upon me to assign to you the reasons which have influenced me to absent myself from the sub-committee of correspondence; and in explanation of my conduct, I shall briefly recapitulate my motives for first uniting with your Association, as well as my proceedings as a member of the enlarged committee.

“ I had just obtained *security of property* to the natives of Bengal, Bahar, and Benares, by a fixation of land-tax, and an abolition of all internal impositions, or, to use the words of authority, “ *A new constitution had been announced to many millions of the Asiatic subjects of Great Britain;*” and I was rejoicing in this happy issue of my exertions,

* A son of the late Bishop of Carlisle, and brother to Lord Ellenborough, now residing in the United States of America—a man of great good sense, and of the purest and most honest mind and character.

when I perused your advertisement, wherein you avowed yourselves to be '*private men unconnected with any party or description of persons at home, taking no concern in the struggles at this moment making abroad, but most seriously anxious to preserve the true liberty and unexampled prosperity we happily enjoy in this kingdom.*' My heart immediately informed me that I could zealously and firmly co-operate in such a cause, and with such independency, and I accordingly subscribed my name.

" Upon the first day that I became a member of the above-mentioned committee, when the suppression of inflammatory publications was introduced as our primary object, I recommended, as a previous measure, the counteraction of their effects by cheap pamphlets, and gave the purport of the following extract from an Act of the Assembly of Virginia to corroborate my argument:—*'That it is time enough for the rightful purposes of civil government, for its officers to interfere when principles break out into overt acts against peace and good order, and that TRUTH is great, and will prevail, if left to herself; that she is the proper and sufficient antagonist to ERROR, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous, when it is permitted freely to contradict them.'*

" The Gentlemen of the Committee approved of

my conduct, and I had the pleasure to see mildness the feature of our deliberations *that day*; but shortly after this, perceiving with regret, a deviation from your original profession, ‘*to take no concern in the ‘struggles abroad*,’ I felt myself compelled to deliver the following opinion in writing :

“ ‘ When I had the honour to receive a letter ‘ from the Secretary of this Society, I replied, *That ‘without adverting to the politics of other countries, ‘I should be happy to co-operate for preserving liberty ‘and property against republicans and levellers in my ‘own.*

“ ‘ I conceived it to be the express intention of ‘the enlarged committee to counteract, by cheap ‘publications, the delusive doctrines of seditious ‘libellers; I used the language of moderation the ‘first day, and had the satisfaction to be elected, by ‘strangers to me, for one of the sub-committee; ‘but, as we have lately introduced animadversions ‘upon the French, I feel it incumbent upon me to ‘dissent therefrom.

“ ‘ *We are looked up to as the germ of other associations*; and it is not our duty, I trust, to revive ‘national antipathies, which have so long distracted ‘France and Great Britain; the situation of the old ‘government of France bears no analogy to that of ‘Great Britain; *we have not a Bastile to destroy— ‘we have not a trial by jury to establish—the people ‘of Great Britain are, I hope, conscious of the ‘blessings of a free government, and are aware how*

very little they have to gain, and how very much to lose, by any revolution.

““ If any emissaries are attempting to alienate the attachment of His Majesty’s subjects in this country, I will cordially unite in their detection and apprehension ; but I cannot coincide with the gentlemen of this committee, in censuring the conduct of any other government, let it be ever so erroneous, or in accusing it of trying to subvert our Constitution, as it may complain to our government of such attacks, and call upon us for proof.

““ I move, therefore, that all our reasonings, and that all our exertions, shall be directed against false doctrines, and against all seditious words, writings, and actions whatsoever, and by whomsoever, and that we do not introduce the French, unless to show that their arguments and measures cannot be applied to us.

(Signed) ‘ T. L.’

“ Upon this occasion I was gratified by seeing the committee erase those animadversions which they had previously resolved upon, because deliberation showed them to be unfounded.

“ The moderation of our measures for a few days afterwards, afforded me the sincerest satisfaction, but I felt equal surprise and regret, when the following proceedings took place upon the 11th instant.

“ *A Committee of Correspondence to be nominated, to consist of five members.*

“ ‘ 1st. *This Committee may do immediately whatever is suggested by letters, or prepare for the General Committee.*

“ ‘ 2dly, *To apply to Government to direct the Solicitor of the Treasury to attend to the suggestions of this Society. This to be done by the Chairman with the Attorney General.*’

“ Having been present when anonymous letters were received, darkly accusing some of the first characters in this kingdom, and even His Majesty’s Officers, which, when conveyed to Government, must necessarily excite alarm and distrust, and considering that individuals, however innocent, had no means of refuting clandestine calumnies, I proposed, ‘ That the Committee of Five be directed to burn all ‘ anonymous letters accusing individuals ;’ but this proposition was suppressed by carrying the previous question against it.

“ As I deemed myself responsible for my conduct to the Association at large, I requested the President to record the above proceeding, but he refused ; I next stated to the Committee, that ‘ *since every motion, and every voting, formed part of our proceedings, I hoped the foregoing would be entered;*’ but, being put to the vote, it was negatived.

“ In this predicament, I am necessitated to enumerate these particulars in this letter, that reference may be had to it, should any one attribute inconsistency to me, or charge me with a dereliction of principle. I am sincerely attached to my Sovereign

and the constitution of this government, and I am ready to assist in bringing any traitor to punishment; but I should condemn myself as a false friend to all, if I acted in any measure which tended in my opinion to frustrate the intention of its promoters, and to alienate public affection.

“ I have asked myself, ‘ *Whether I should do unto others, as I would they should do unto me*,’ by admitting and perusing anonymous letters?—Whether confidence, that baird of harmony in society, must not be broken by such a measure? Whether suspicion has not caused horrid assassinations and convulsions? Whether any kind of inquisitorial body does not irritate to commotions? In short, my conscience has admonished me, that my love of my country, and my desire of its tranquillity, all prohibit concealment.

“ It will be urged, that it is not necessary to act upon the information of nameless writers; why then, I ask, shall we wound our minds with baleful impressions, by perusing these letters? And why let men be sunk in estimation, whom we might otherwise admire?—The accused, and the person receiving the accusation, are *both* injured by an anonymous letter, if any impression is made by it; every tribunal in this country requires the impeacher to confront the person arraigned, without which we could not boast that we lived ‘ *rara’ temporum felicitate, ubi licet sentire quod velis et dicere quod sentias*. But why do I expatiate on this head? I trust that you

cannot but approve the principle which determines me to absent myself, however falsely delicate you may consider this determination.

“ I will cheerfully attend the enlarged Committee, whenever summoned ; and permit me to add, that if any treasonable plots existed to my knowledge, which required *peculiar efforts*, I should never withdraw myself from any situation, however irksome, dangerous, or even opprobrious, wherein I could be of the least service to my country.

“ I remain, Gentlemen,

“ Your most obedient humble servant,

Dec. 17,

“ THOMAS LAW.”

No. 16, Weymouth Street.

To resist and to counteract the effect of proceedings so novel, so extraordinary, and so dangerous, a great many gentlemen of distinction held two public meetings, at the first of which, several resolutions were adopted ; and, at the second, held on the 19th of January 1793, the following proceedings, now reprinted, took place.

They were originally printed by the Editor, by direction of the Committee, appointed by the Meeting.

PROCEEDINGS

OF THE

FRIENDS TO THE LIBERTY OF THE PRESS.

January 19, 1793.

The Honourable THOMAS ERSKINE, M. P. in the
Chair.

Mr. Erskine said, that though he did not regard calumny and misrepresentation, as far as it affected himself personally, which he took it for granted was the case with every gentleman present; yet, as far as it affected the great object for which they were assembled, it was of the highest importance to the Public: that he should, therefore, to render misrepresentation utterly impossible, read what he had to say from a paper, which he had written. He then read as follows:

DECLARATION

OF THE

FRIENDS TO THE FREEDOM OF THE PRESS.

“ The peculiar excellence of the English Constitution, on which indeed the value of every government may be summed up, is, that it creates an equal rule of action for the whole nation, and an impartial administration of justice under it.

“ From those master principles results that happy, unsuspecting, and unsuspected freedom, which for ages has distinguished society in England, and which has united Englishmen in an enthusiasm for their country, and a reverence for their laws.

“ To maintain this fearless tranquillity of human life, the prime blessing of social union, the power of accusation was not given to *uninjured* individuals, much less to *voluntary, undefined, unauthorized* associations of men, acting without responsibility, and open to irregular and private motives of action ; but was conferred upon the supreme executive magistrate, as more likely to look down upon the mass of the community with an unimpassioned eye ; and even that wisely placed trust, guarded by the personal responsibility of those Officers by which the Crown is obliged to exercise its authority, and in the higher order of crimes (which on principle should extend to all), guarded once again by the office of the Grand Jury, interposed as a shield between the people and the very laws enacted by themselves.

“ Those admirable provisions appear to be founded in a deep acquaintance with the principles of society, and to be attended with the most important benefits to the Public ; because, tempered again, and finally with the trial by the country, they enable the English Constitution to ratify the existence of a *strong, hereditary, executive* government, consistently with the security of popular freedom.

“ By this arrangement of the royal prerogative of accusation, so restrained and mitigated in its course, the Crown becomes an object of wholesome, but not dangerous jealousy ; which, while it prevents it from overstepping its constitutional limits, endears the people to one another, from a sense of the necessity of union amongst themselves, for the preservation of their privileges against a power dangerous to remove, but equally dangerous to exist, unobserved, and unbalanced.

“ Under this system, making allowance for the vices and errors inseparable from humanity, state accusations, *in modern times*, though sometimes erroneous, have not often been rash or malevolent ; —The criminal under the weight of the firm hand of justice, has been supported by the indulgent fraternal tribunal of his country.

“ But under the circumstances which assemble us together, all these provisions appear to be endangered.

“ A sudden alarm has been spread through the kingdom by the ministers of the Crown, of imminent danger to the Constitution, and to all order and government. The nation has been represented to be fermenting into sedition and insurrection, through the dangerous associations and writings of disaffected and alienated subjects ; and under the pressure of this perilous conjuncture the Parliament has been suddenly assembled, and the militia embodied.

“ The existence or extent of those evils, since

they have been sanctioned, though not ascertained, by the authority of Parliament when assembled, we have not, upon the present occasion, assembled to debate; but we may, without sedition, congratulate our fellow-subjects, that our ministers have had the vigilance to detect those *numerous and bloody* insurrections, which otherwise might have *secreted themselves*, and passed *unknown and undiscovered*; and that, without the punishment of a single individual, for any overt act of treason, the people have recovered all that tranquillity and respect for the laws, which they appeared to us to have equally possessed at the time when the alarm burst forth.

"That large classes of the community should, nevertheless, give faith to the assertions and acts of a *responsible* government, is neither to be wondered at, nor disapproved. When the English Constitution is authoritatively represented to be in danger, we rejoice in the enthusiasm of Englishmen to support it. When that danger is further represented to have been caused or increased by the circulation of treasonable and seditious writings, we acknowledge that it is the duty of every good subject in his proper sphere, and by *proper means*, to disown them:—*nothing is further from the intention of this Meeting than to hold up to public disapprobation such individuals, as, from honest motives, have joined associations, even though they may in their zeal have shot beyond that line of exertion*

which we (mistakenly, perhaps, but conscientiously) conceive to be the safe limitation of assistance to executive government by private men.

“ We assemble neither to reprehend, nor to dictate to others, but from a principle of public duty to enter our solemn protest against the propriety or justice of those associations, which, by the contagion of example, are spreading fast over England, supported by the subscriptions of opulent men, for the avowed object of *suppressing and prosecuting* writings:—more especially when accompanied with **Rewards to Informers**; and, *above all*, when those rewards are extended (of which there are instances) to question and to punish opinions delivered even in the private intercourses of domestic life; unmixed with any act or manifested intention against the authority of the laws.

“ We refrained at our former Meeting from pronouncing these proceedings to be illegal and punishable, because we must receive the rule from our statutes and precedents of law, which are silent on the subject; but we consider them to be doubtful in law, and unconstitutional in principle, from the whole theory, and all the analogies of English justice.

“ In the first place, we object to them as wholly unnecessary;—and we give this objection precedence, because there ought to be a visible necessity or expediency to vindicate every innovation in the mode of administering the laws. Supposing, then,

the conjuncture to be what it is by authority represented; the Crown is possessed of the most ample powers for the administration of speedy and universal justice.

“ If the ordinary sittings of the courts are found at any time to be insufficient for the accomplishment of their jurisdictions; or if even a salutary terror is to be inspired for the general security, the *King* may appoint special commissions for the trial of offenders.

“ If the revenue devoted to the ordinary purposes of criminal justice should be found insufficient for an unusual expenditure, Parliament is ever at hand to supply the means; and no Parliament can be supposed to refuse, or the people be suspected to murmur at, so necessary an expense.

“ If information also became necessary for the discovery and conviction of offenders, the Crown may at any time, by its authority, set even informers in motion.

“ But under all this awful process, public freedom would still be secured, while the public safety was maintained.—The Crown still acting by its officers, would continue to be responsible for the exercise of its authority; and the community, still bound together by a common interest, and cemented by the undisturbed affections and confidences of private life, would be sound and pure for the administration of justice.

“ This we maintain and publish to be the genius

of the British Constitution, as it regards the criminal law.

“ But when, without any state necessity, or requisition from the Crown, or Parliament of the kingdom, bodies of men voluntarily intrude themselves into a sort of partnership of authority with the executive power ; and when, from the universal and admitted interest of the whole nation, in the object or *pretexts* of such associations, the people (if they continue to spread as they have done) may be said to be in a manner represented by them, where is the accused to find justice among his peers, when arraigned by such combinations ?—Where is the boasted trial by the country, if the country is thus to become informer and accuser ?—Where is the cautious distrust of accusation, if the Grand Jury may themselves (or some of them) have informed against the object of it, brought in the very bill which they are to find, and subscribed for the prosecution of it ?—Where in the end is the mild, complacent, relenting countenance of the Jury for trial—that last consolation which the humanity of England never denied, even to men taken in arms against her laws, if the pannel is to come reeking from the vestry-rooms, where they have been listening to harangues concerning the absolute necessity of extinguishing the very crimes and the criminals, which they are to decide upon in judgment, and to condemn or acquit by their verdicts ?

“ But if these proceedings must thus evidently

taint the administration of justice, even in the superior courts, where the Judges, from their independence, their superior learning, and their further removal from common life, may be argued to be likely to assist Juries in the due discharge of their office—what must be the condition of the courts of quarter sessions, whose jurisdictions over these offences are co-ordinate—where the Judges are the very gentlemen who lead those associations in every county and city in the kingdom, and where the jurors are either tenants and dependants, or their neighbours in the country, justly looking up to them with confidence and affection, as their friends and protectors in the direction of their affairs? **IS THIS A TRIAL BY AN ENGLISH COURT AND JURY?** It would be infinitely more manly, and less injurious to the accused, to condemn him at once without a hearing, than to *mock* him with the empty forms of the British Constitution, when the substance and effect of it are destroyed.

“ By these observations we mean no disrespect to the magistracies of our country. But the best men may inadvertently place themselves in situations absolutely incompatible with their duties. Our natures are human, and we err when we consider them as divine.

“ These incongruities arising from this rage of popular accusation, or even of declared popular support to accusations proceeding from the Crown, are not our original observations. We are led to

them by the analogies and institutions of the law itself.

“ On this principle, criminals impeached, not by the people heated with a sense of individual danger, and personally mixing themselves with the charge and the evidence, but, impeached by the House of Commons representing them, are tried, from the necessity of the case, by the Lords, and not by the country. This anomaly of justice arose from the humanity and wisdom of our ancestors:—they thought, that when the complaint proceeded not from the Crown, whose acts the people are accustomed to watch with jealousy, but from the popular branch of the government, which they lean towards with favour, it was more substantial justice to the meanest man in England, to send him for trial before the Lords, though connected with him by no common interest, but, on the contrary, divided by a separate one, than to trust him to a Jury of his equals, when the *people* from which it must be taken was even in *theory* connected with the prosecution, though totally unacquainted, in fact, with its cause, or with its object.

“ We appeal with confidence to the reason of the Public, whether these principles do not apply, by the closest analogy, to the proceedings which we assemble to disapprove. Criminal jurisdictions are local; the offence must be tried in the county, and frequently in the very town, where it is charged to be committed; and thus the accused must not

only stand before a Court infected by a *general prejudice*, but in a manner disqualified by *a pointed and particular passion and interest*.

“ We have further to remark, that these objections to popular associations or the prosecution of crimes, apply with double force when directed against THE PRESS, than against any *other* objects of criminal justice which can be described or imagined.

“ Associations to prosecute offences against the game laws, or frauds against tradesmen (which we select as familiar instances), though we do not vindicate them, nevertheless distinctly describe their objects, and, in suppressing illegal conduct, have no immediate tendency to deter from the exercise of rights which are legal, and in which the Public have a deep and important interest.

“ No unqualified person can shoot or sell a hare, or a partridge, as long as a monopoly in game is suffered to continue, without *knowing* that he transgresses the law; and there can be no difference of judgment upon the existence, extent, or consequence of the offence.—The trial is of a mere *fact*.—By such associations, therefore, the Public cannot be stated to suffer further than it always suffers by an oppressive system of penal law, and by every departure from the due course of administering it.

“ In the same manner, when a swindler obtains goods on false pretences, he cannot have done so from error, the act is decisive of the intention; the

law defines the crime with positive precision ; and the trial is in this case, therefore, only the investigation of a fact ; and in holding out terrors to swindlers, honest men are in no danger, nor does the Public suffer further than we have above adverted to.

“ These associations besides, from their very natures, cannot be so *universal*, as to disqualify the *country at large* by prejudice or interest from the office of trial ;—they are bottomed besides, particularly the last (which is a most material distinction), upon crimes, the perpetration of which is injurious to individuals *as such*, and which each individual in his own personal right might legally prosecute : whereas we assemble to object to the popular prosecution of those *public* offences, which the Crown, if they exist, is bound in duty to prosecute by the Attorney General ;—where no individual can count upon a personal injury ;—and where the personal interest of the subject is only as a member of that Public, which is committed to the care of the executive authority of the country.

“ The press, therefore, as it is to be affected by associations of individuals to fetter its general freedom, *wholly unconnected with any attack upon private character*, is a very different consideration ; for if THE NATION is to be combined to suppress writings, without further describing what those writings are, than by the general denomination—*seditious* ; and if the exertions of these combinations

are not even to be confined to suppress and punish the circulation of books, *already condemned by the judgments of Courts*, but are to extend to whatever does not happen to fall in with *their* private judgments:—if every writing is to be prosecuted which *they* may not have the sense to understand, or the virtue to practise:—if no man is to write but upon *their* principles, nor can read with safety except what *they* have written, lest he should accidentally talk of what he has read;—no man will venture either to write or to speak upon the topics of government or its administration—a freedom which has ever been acknowledged by our greatest statesmen and lawyers to be the principal safeguard of that Constitution, which liberty of thought originally created, and which a FREE PRESS for its circulation gradually brought to maturity.

“ *We will, therefore, maintain and assert* by all legal means, this sacred and essential privilege, the parent and guardian of every other. *We will maintain and assert* the right of instructing our fellow-subjects by every sincere and conscientious communication which may promote the public happiness; and while we render obedience to Government and to law, we *will remember* at the same time, that as they exist by the people’s consent, and for the people’s benefit, they have a right to examine their principles, to watch over their due execution, and to preserve the beautiful structure of their political system, by pointing out, as they arise, those defects

and corruptions which the hand of time never fails to spread over the wisest of human institutions.

“ If in the legal and peaceable assertion of this freedom, we shall be calumniated and persecuted, we must be contented to suffer in the cause of freedom, as our fathers before us have suffered ; but we will, like our fathers, also persevere until we prevail.

“ Let us, however, recollect with satisfaction, that the law as it stands at this very moment (thanks to our illustrious patriot, Mr. Fox, who brought forward the Libel bill), is amply sufficient for the protection of the Press, if the country will be but true to itself. The extent of the genuine Liberty of the Press on *general* subjects, and the boundaries which separate them from licentiousness, the English law has wisely not attempted to define ; they are, indeed, in their nature undefinable ; and it is the office of the Jury alone, taken from the county in each particular instance, to ascertain them, and the trust of the Crown, where no individual is slandered, to select the instances for trial by its ministers, responsible to Parliament.

“ This system appears to us amply to secure the Government, while it equally protects the subject ; but if this selection is to be transferred to self-constituted assemblies of men, agitated by a zeal, however honest, the Press must be broken up, and in-

dividuals must purchase their safety by ignorance and silence.

" In such a state, we admit that the other liberties, which we enjoy under the laws, might nevertheless continue as long as government might happen to be justly administered ; but should corruption or ambition ever direct their efforts against them, the nation would be surprised and enslaved—surprised by the loss of their wakeful sentinels, whom they had shot for only being at their posts, and enslaved from the loss of their armour, which their adversary, under the pretence of a treaty, had ca-joled them to throw away.

" But these evils become not only greater, but absolutely intolerable, when extended to the stimulation of spies to stab domestic peace, to watch for the innocent in the hours devoted to convivial happiness, and to disturb the sweet repose of private life upon the bosom of friendship and truth.

" It is justly observed by the celebrated Judge Forster, that words are transitory and fleeting, easily forgotten, and subject to mistaken interpretations.—Shall their very existence then—and their criminality, as depending upon context, or sequel, or occasion—shall all rest on the oaths of hired informers ? Is *this*, in the end of the eighteenth century, to be the condition of our cheerful country ?—Are these to be our chains ?—And are we, after we have broken them on the heads of tyrants in former

ages, to sit down to forge them again for ourselves, and to fasten them on one another?

“ Our last, and not the least objection to popular accusation, is the love we bear to the Government of England, and our wish that its functions may be perpetual: it being our opinion, as expressed in our seventh resolution, at our former Meeting,

“ That a system of jealousy and arbitrary coercion of the people has been at all times dangerous to the stability of the English Government. For the truth of which we appeal to human nature in general, to the characteristic of Englishmen in particular, and to the history of the country.

“ In the career of such a system of combination, we foresee nothing but oppression; and when its force is extinguished, nothing but discontent, disobedience, and misrule.—If Government permits or countenances this distribution of its executive powers, how is it to resume them should opinions change, and run the other way? From the artifices and ambition of designing men, the best governments may, for a season, be unpopular, as we know from experience, that the very worst may triumph for a while by imposture. Should such a change of opinion arrive, as in the nature of things it must, the administration of government and justice will be distracted and weakened. It will be in vain to inculcate that subjects may persecute one another by combination, but that they must not combine for their common defence:—and as, in this unnatural

tide of flood, no man may expect to be acquitted, however he may love his country ; so, in the ebb of the same tide, equally unnatural, it may be difficult to bring to conviction, even those who may be plotting its destruction. Against both these departures, from the even and usual course of justice, and all their consequences, we *equally*, and with an *impartial* spirit, protest.

“ When we consider the great proportion of the community, that has already *hastily* sanctioned the proceedings which we dissent from, the great authority that countenances them, the powerful influence which supports them, and the mighty revenue raised upon the people, which through various channels rewards many of those who lead the rest ; we are aware of the difficulties which this Address has to encounter ; and judging of man from his nature and his history, we expect no *immediate* success from our interposition. But we believe that the season of reflection is not far distant, when this humble effort for the Public will be remembered, and its authors be vindicated by the people of Great Britain.”

Mr. Sheridan said, that the very able and eloquent paper which they now had the happiness to hear read by the author himself, contained political opinions so strongly enforced, and displayed the truth in so irresistible a form, that the whole Society had but one sentiment as to its merits. He

agreed with his Honourable Friend in every syllable he had advanced. It was an admirable protest, and might serve to convey to the world the principles of the Society. He therefore recommended it to be adopted by the Meeting as their DECLARATION. The Learned Gentleman now appeared in a new and honourable character; and while he gave a proof of his manly firmness, he acted with peculiar delicacy and moderation. When these sentiments were announced, the world would be convinced, that the friends of real freedom were not to be subdued or overawed by the wretched artifice of Government. The present Meeting had been treated by Administration, not with levity, but alarm. They would, however, be soon fully persuaded, that this juggling plan of policy could no longer be concealed; that their appeal to the rabble would not avail; and that the people could not dread thunder while the sky was clear: in short, that their deceptions measures would soon be exploded; and that the good sense of Englishmen would revolt at violated rights and expiring liberty. With regard to the author of the excellent paper, he begged leave to say a few words. The new character which he now acted must afford the most lively sensations. If private individuals rejoiced when Mr. Erskine stood forward as their advocate, how much more must that pleasure be increased, when he now appeared as the advocate of the nation at large! retained by the honourable impulse of his heart, and rewarded by the

affections of the people ! He volunteered his transcendent talents, in the most disinterested way. Scorning a brief or fee, he courted no other reward than the applause of his fellow-citizens—he had no other object in view than the good of mankind. This pursuit was the noblest gratification of a great and a good mind. Convinced of the truths contained in the inestimable paper, he moved, that it should be adopted as the creed or declaration of the Society ; that it should be published to the world at large as their protest against the associations ; and that the members of those clubs be permitted to answer it—if they could. Mr. Sheridan then moved, “ That the paper then read be adopted as the DECLARATION OF THE FRIENDS TO THE FREEDOM OF THE PRESS ;” which motion was immediately carried without a dissenting voice ; and in a short time the Declaration received above five hundred most respectable signatures.

To appreciate the merit or propriety of the foregoing composition, is foreign to the Editor's design, who has not, in any one instance, presumed to introduce criticism of praise or blame, or to deliver any opinion of his own, regarding the subjects of the publication ; but he cannot forbear observing, without departing from this rule, that the Declaration above mentioned, is in perfect conformity with the principles which characterize all Lord Erskine's pleadings,

which the *Editor* has here collected. As a politician, he may have been mistaken in thinking that the country was in no danger from domestic enemies, at the period of this Declaration; but still its great object would remain untouched—THE SUPPORT OF THE REGULAR, UNAIDED, UNDISTURBED DOMINION OF THE LAW;—this appears to have been not only the Author's characteristic, but his ruling passion; and we cannot, therefore, better conclude this Collection than by the concluding sentence of the eloquent criticism upon the two first volumes, in the *Edinburgh Review*:

“ While the administration of the law flows in
“ such pure channels—while the Judges are in-
“ corruptible, and are watched by the scrutinizing
“ eyes of an enlightened Bar, as well as by the
“ jealous attention of the country—while Juries con-
“ tinue to know, and to exercise their high func-
“ tions, and a single advocate of honesty and ta-
“ lents remains—thank God, happen what will in
“ other places, our personal safety is beyond the
“ reach of a corrupt ministry and their venal ad-
“ herents. Justice will hold her even balance, in
“ the midst of hosts armed with gold or with steel;
“ the law will be administered steadily, while the
“ principles of right and wrong—the evidence of
“ the senses themselves—the very axioms of arith-
“ metic—may seem, elsewhere, to be mixed in one
“ giddy and inextricable confusion; and, after every

“ other plank of the British Constitution shall have
“ sunk below the weight of the Crown, or been stove
“ in by the violence of popular commotion, that one
“ will remain, to which we are ever fondest of
“ clinging, and by which we can always most se-
“ surely be saved.”

THE END OF THE FOURTH VOLUME.









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